



U.S. Citizenship  
and Immigration  
Services

Director of Administrative Appeals

[Redacted]

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FEB 12 2009

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:  
WAC 03 039 55404

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Mari Jensen*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a youth servant. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits a brief.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on November 15, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

In a letter accompanying the petition, Father [REDACTED] the petitioner's associate priest, stated that the proffered position was that of a "youth servant," and that the beneficiary had been "employed" in that position since September 1999. Father [REDACTED] stated that in the position:

[The beneficiary] assisted in Church services on a regular schedule of four days per week, morning and evening, and on spiritual days. Moreover, as a youth servant, the beneficiary has had a leadership role in the spiritual retreats and outings that are performed regularly around the year for the youth of the church. During his more than two years of employment by our Church, [the beneficiary] has received money to cover his day-to-day expenses as well as his college education.

The petitioner submitted no documentary evidence of the beneficiary's work with the petitioning organization or of the financial support that it provided to him. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In response to the director's request for evidence (RFE) dated June 10, 2003, the petitioner stated that the proffered position was that of "Singer Deacon-Youth Leader." Father [REDACTED] in a letter dated August 4, 2003, stated, "[The beneficiary] has been working in our church since September 1999, first as a Youth Servant and then as a Singer Deacon-Youth Leader." Father [REDACTED] also stated that during the two-year period from November 2000 to November 2002, the beneficiary's work at the church consisted of the following:

Wednesdays - 7-9 AM Service Alter/Liturgy  
6-8 PM Taught youth Bible class  
Fridays - 7-9 AM Service Alter/Liturgy  
7:30-10:30 PM Youth Bible class & spiritual discussion  
Saturdays - 8-10 AM Service Alter/Liturgy  
7-11 AM Vesper prayer, Bible discussion, lead youth in Night Prayer  
Sundays - 8-12 NOON Service Alter/Liturgy

Father [REDACTED] stated that in addition to his "formal duties," the beneficiary was "also responsible for providing spiritual guidance to Church youth in hospitals and in homes. This accounted for roughly 10 hours per week, usually in the evenings." Father [REDACTED] reiterated that although the beneficiary did not receive a "formal salary," the petitioner "provided him with small amounts of cash for his day-to-day needs and has supported him through payment of education expenses." The petitioner again failed to provide documentary evidence of the beneficiary's work with the petitioner or any evidence of the financial support that it provided to him. *See id.*

Father [REDACTED] further stated that the duties of the proffered position include teaching Bible and hymn classes to the youth, servicing the altar (during liturgy), leading youth in spiritual retreats which are done four to five times annually, counseling youth, visiting youth members in their homes and in the hospital. According to Father [REDACTED] 15 "Youth Servants" currently report to the beneficiary. Father [REDACTED] also stated that in order to hold the proffered position, "one must complete the servant preparation program offered by the Church."

The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

The petitioner clearly distinguishes the position of "youth servant" from that of the proffered position "singer deacon-youth leader." The evidence is unclear, however, as to when the beneficiary assumed the duties of the proffered position. According to section 203(b)(4) of the Act and 8 C.F.R. § 204.5(m)(1), the beneficiary must have two years continuous experience in the occupation for which he or she is seeking entry into the United States. The evidence does not establish that the beneficiary served as a singer deacon-youth leader for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that the beneficiary worked full-time in a qualifying position for two full years prior to the filing of the visa petition. Counsel asserts that AAO has held in previous decisions that the prior qualifying work does not have to be on a full-time basis. While 8 C.F.R. § 103.3(c) provides that precedent decisions of Citizenship and Immigration Services (CIS) are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Counsel cites no precedent decisions in support of her argument.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years

immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

The petitioner and counsel concede that the beneficiary did not work full time in a religious occupation for two full years prior to the filing of the visa petition. Although it provided no evidence of having assisted the beneficiary with his educational expenses, the petitioner indicated that the beneficiary was attending school during the qualifying two-year period. The petitioner submitted no corroborative evidence of the beneficiary's work with the petitioning organization. The evidence does not establish that the beneficiary was not dependent upon secular employment for his support.

The evidence does not establish that the beneficiary was engaged continuously in the same occupation or vocation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner did not establish that it had the ability to pay the beneficiary a wage. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicates that it will pay the beneficiary \$1,000 per month. However, the petitioner submitted no evidence of its ability to pay this wage. This deficiency constitutes an additional ground for dismissal of the appeal.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.