



U.S. Citizenship
and Immigration
Services

U.S. DEPARTMENT OF
HOMELAND SECURITY
OFFICE OF PUBLIC AFFAIRS
PITTSBURGH, PA

CI

FEB 15 2008

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

WAC 94 226 52180

IN RE:

Petitioner:

[Redacted]

Beneficiary:

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.

Maia Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke the approval of the preference visa petition and his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on February 6, 2004. The petition 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 director of religious education. 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, that the position qualified as that of a religious worker or that the beneficiary was qualified for the position within the organization.

On appeal, counsel submits a brief and additional documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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 August 23, 1994. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

The record contains a statement from the petitioner dated September 2, 1994, in which its pastor “certifies” that the beneficiary “has been working since Aug. 1992 to present as Director of Religious Education.” The petitioner also stated that the beneficiary was coming to the United States “solely to work as a Director of Religious Education” for the petitioner. A document dated June 7, 1994, from the [REDACTED] Church, “certifies” that the beneficiary served as director of religious education from October 10, 1989 to January

31, 1992.¹ In an undated Form ETA 750, Application for Alien Employment Certification, the beneficiary stated that he worked 40 hours per week for both the [REDACTED] Church and the petitioning organization. On an undated Form G-325A, Biographic Information, the beneficiary stated that he worked in a volunteer capacity for the petitioner, beginning in August 1992. The petitioner submitted no documentary evidence to corroborate the beneficiary's employment during the qualifying period. 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).

The record also contains a transcript from California State University in Fullerton, which indicates that the beneficiary was admitted to that institution as a candidate for the Bachelor of Science degree in computer science on August 31, 1995. The transcript indicates that the beneficiary attended Kyung Hee University from January 1985 to June 1992, Orange Coast College from January 1994 to June 1995, and Rancho Santiago College from June 1994 to June 1995.

The petitioner submitted a copy of a certificate of graduation, indicating that the beneficiary graduated from the Kyung Hee University in Seoul, Korea with a Bachelor of Science degree in environmental science. The transcript indicates that the beneficiary was admitted to the school in March 1985, but does not reflect any courses between 1988 and 1999. The beneficiary apparently resumed his studies in 1990 and eventually graduated in 1992.

A letter from Orange Coast College indicated that the beneficiary attended the school full time beginning in the fall semester of 1994 and attended through the spring of 1995. A Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) student, dated April 15, 1994 signed by the beneficiary and an official of the Orange Coast College indicated that the beneficiary was to pursue studies at the institution to obtain an Associate Degree in computer information systems, beginning on January 3, 1994 for a period of 2 ½ years. The form also indicated that the beneficiary would receive financial support for his attendance at the school from his father-in-law.

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).

¹ The translation accompanying the certificate does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, or did not certify that he or she is competent to translate from Korean into English.

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.

Counsel asserts on appeal that the statute does not prohibit voluntary work as a basis for the two-year experience requirement. However, counsel submits no documentary evidence to corroborate the beneficiary's employment. Further, the record establishes that the beneficiary was attending school throughout most of the qualifying two-year period, attending classes unrelated to any religious subject. The petitioner provides no evidence to explain how the beneficiary attended school, apparently on a full-time basis, while at the same time working full-time for the petitioner and the [REDACTED] church. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The evidence does not establish that the beneficiary was continuously employed in the religious occupation for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that the position qualified as that of a religious worker. Pursuant 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a

brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

According to the petitioner, the duties of the proffered position are to develop, organize, and direct the church school's religious program and promote religious education; create religious study courses and programs; provide counseling, guidance and assistance to students and church members; conduct Bible study sessions, discussion groups and retreats; and plan religious studies and activities to encourage attendance and interest in Bible study.

On appeal, counsel asserts that the regulation recognizes religious instructor as a religious occupation, and therefore, the proffered position qualifies as a religious occupation. Nonetheless, the evidence does not establish that the position exists within the petitioning organization. The evidence does not establish that the beneficiary or anyone else has ever occupied the position. The evidence indicates that prior to the filing of the visa petition, the beneficiary was attending school full time. Further, the evidence indicates that the beneficiary continued in school subsequent to the filing of the petition including attendance at the Golden Gate Baptist Theological Seminary beginning in the fall semester of 2000. Although the petitioner submitted copies of the beneficiary's income tax returns, in which he stated that he was a church education director with the petitioner, the assertion, unsupported by other evidence in file, is unpersuasive. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The petitioner has not established that the proffered position is defined and recognized by the petitioner's governing body, or that the position is traditionally a permanent, full-time, salaried position within the denomination.

The director further determined that, based on the Form ETA 750, Application for Alien Employment Certification, the petitioner had not established that the beneficiary was qualified for the position within the organization.

The Form ETA 750, however, is undated, contains no evidence that it was filed with the U.S. Department of Labor (DOL), and does not constitute an official representation to DOL or to CIS. Therefore, we withdraw this statement by the director.

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.