

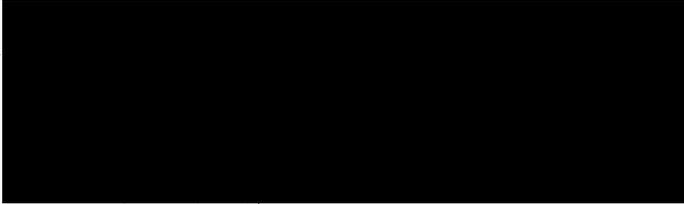
Identifying data deleted to  
prevent identity investigation  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



CI

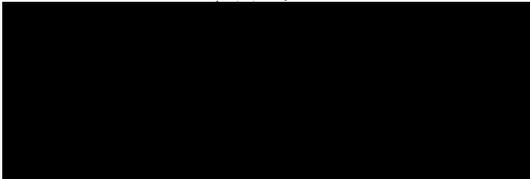
FEB 15 2005

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date:  
SRC 02 207 50102

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:



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 Pluon*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas 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 minister of outreach. 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 letter and additional documentation.

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 June 21, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as an outreach minister throughout the two-year period immediately preceding that date.

In its letter accompanying the petition, the petitioner stated that the beneficiary worked as minister of outreach at the [REDACTED] from May 1, 2000 until September 12, 2001, when he was hired for the same position with the petitioner. The petitioner submitted a letter from the [REDACTED] in which the pastor, [REDACTED] stated that the beneficiary and his family "were a part" of the church from January 9, 2000 through July 1, 2001, and that the beneficiary served on the church's "pastoral staff as Minister of Outreach." In a letter dated July 28, 2003, Reverend [REDACTED] stated that the beneficiary began working for the [REDACTED] on May 1, 2000.

According to [REDACTED] the beneficiary's duties consisted of ministering and teaching, assisting the senior pastor in conducting worship, conducting weddings, funerals and other church services, and providing spiritual guidance to church members. Reverend [REDACTED] does not state the time that the beneficiary devoted to these duties, but states that during his employment with the church, the beneficiary was enrolled at [REDACTED] Bible Training Center, majoring in religious education. Reverend [REDACTED] also does not state whether or not the beneficiary was compensated for his services. However, copies of Forms 1099-MISC issued by the [REDACTED] indicate that the beneficiary received \$4,000 in nonemployee compensation in 2000 and 2001.

The record reflects that the beneficiary first attended the [REDACTED] Bible Training Center beginning on September 8, 1999, and received a diploma for completing the two-year ministerial training course on May 18, 2001. The record also contains a copy of a July 4, 2001 certificate of ordination issued by the World Bible Way Fellowship, Inc., which the petitioner states it accepts as authorization to minister in its own organization. The certificate authorizes the beneficiary to preach, administer the ordinances of the church, and perform marriage and funeral services.

According to Reverend [REDACTED] the beneficiary was not required to be ordained in order to perform his work at the [REDACTED]. The petitioner submitted a copy of a membership card indicating that the beneficiary was a licensed minister and that his membership was scheduled to expire on December 31, 2000. The petitioner does not submit a copy of the original certificate and there is no evidence in the record that indicates the parameters of a licensed minister's duties.

In a request for evidence (RFE) dated April 11, 2003, the director instructed the petitioner to [s]ubmit a detailed description of the beneficiary's prior work experience for the immediate past two years including job title . . . duties, hours, and compensations." In response, the petitioner submitted a document labeled "Job

Title; Outreach Minister” and which outlines a weekly work schedule for the position. The duties included in that schedule involve, among other things, prayers, hospital visitations, preparing for weekend sermons, and preaching at alternate weekly Sunday evening services. Another document is labeled “Job Title: Outreach Minister/Pastor’s Personal Assistant.” This document indicates that the beneficiary’s duties were divided among 1) an outreach ministry in which he spent 75 percent of his time “taking the gospel to the unchurched” twice a week at the pastor’s discretion, home visitation and assisting the pastor when church was in session; 2) administrative work, involving bill payment, preparing weekly bulletins and announcements, which consumed 15 percent of the beneficiary’s time; and 3) church maintenance, supervising the janitorial staff and reporting to the pastor any maintenance required, which consumed 10 percent of the beneficiary’s time.

The petitioner stated that the beneficiary was paid \$500.00 per month plus housing, transportation, food and clothing. The petitioner submitted a copy of a 2001 Form 1099-MISC that it issued to the beneficiary, which reflects \$2,170.00 in nonemployee compensation.

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.

The record reflects that the beneficiary held a position as minister of outreach during the two-year qualifying period. However, although the beneficiary held positions that were called minister of outreach, the record does not clearly establish that for two full years preceding the filing of the visa petition the beneficiary was continuously performing the same duties as those for which he seeks entry. Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C). Job title alone is insufficient to establish that the beneficiary qualifies for the visa preference. Further, the evidence indicates that the beneficiary was attending school, apparently as a full-time student, from June 2000, the beginning of the qualifying period, to May 18, 2001. An individual attending school full time is not engaged in a religious occupation or vocation. *See Matter of Varughese*, 17 I&N Dec. 399.

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.

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.