

Identifying data deleted to  
prevent clearly unwarranted  
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



C1

FILE: [Redacted]  
EAC 03 076 54498

Office: VERMONT SERVICE CENTER

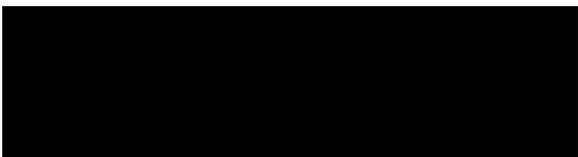
Date: JUL 22 2005

IN RE: Petitioner:  
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:



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 Johnson*

§ Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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 pastoral assistant. 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 January 6, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastoral assistant throughout the two-year period immediately preceding that date.

In a letter dated November 21, 2001, the petitioner stated that the beneficiary "began his full time employment with us in 10/2000." According to the petitioner, the beneficiary's duties consisted of assisting in mass and the sacrament, doing hospital and community outreach, coordinating religious activities for teenagers, and assisting in funeral services. The petitioner stated that the beneficiary worked from 40 to 56 hours per week. The petitioner did not indicate any compensation received by the beneficiary for his services, but indicated that the proffered job would have a starting salary of \$24,000.

The petitioner submitted copies of its reference copies of Form NYS-45-ATT, Quarterly Combined Withholding Reporting and Unemployment Insurance Return – Attachment, for all of 2001 and the first quarter of 2002. These state of New York tax documents reflect that the petitioner paid the beneficiary a total of \$39,575 in 2001 and \$10,008 during the first quarter of 2002.

In response to the director's request for evidence (RFE) dated May 14, 2003, the petitioner submitted copies of the beneficiary's Form W-2, Wage and Tax Statement, for 2001 and 2002, which reflect that the petitioner paid the beneficiary \$39,575 in 2001 and \$43,289 in 2002. The petitioner also submitted copies of the beneficiary's year 2001 and year 2002 Forms 1040A, U.S. Individual Income Tax Returns, which reflect these wages, and also reflect that the beneficiary claimed his occupation as "maintenance."

The director expressed his concern that the wages paid to the beneficiary during the two years preceding the filing of the visa petition was far in excess of what the petitioner indicated would be the compensation for the position. The director also noted that the beneficiary indicated his employment as "maintenance" on his income tax return. The petitioner submitted no documentary evidence to explain these inconsistencies in the record. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 (BIA) 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.

On appeal, the petitioner submits a statement from John Stylianou, who stated that he prepared the beneficiary's tax returns for the years 2001 and 2002. According to Mr. [REDACTED] when the beneficiary told him he worked for the church, he "assumed that he was a maintenance worker." Mr. [REDACTED] further stated that he has since been informed that the beneficiary is a religious worker with the church and attributed the misunderstanding to "a language miscommunication." The petitioner submits copies of amended tax returns for 2001 and 2002, now reflecting the beneficiary's occupation as a "sexton (asst. pastor)." The petitioner also submits a statement on appeal in which it states that the initial salary offer for the position was \$19,000; however, by the time the petition was filed, the salary had risen to the beneficiary's "present listed salary."

The documentation submitted by the petitioner does not provide sufficiently competent evidence to overcome the inconsistencies in the record. Mr. [REDACTED]'s statement does not explain why he would "assume" that the beneficiary worked as a maintenance worker with the church, especially given the amount of his wages. Although he claimed the error was a result of miscommunication, Mr. [REDACTED] does not indicate that he questioned the beneficiary about the nature of his duties and from the answers given, concluded that the beneficiary worked in maintenance. Mr. [REDACTED]'s statement alone is not satisfactory evidence to establish that the beneficiary worked as a pastoral assistant with the church.

Similarly, doubt is cast on the petitioner's statement regarding the increase in the beneficiary's salary over the relevant time period. We note that, in support of a prior Form I-360, Petition for Amerasian, Widow or Special Immigrant Worker, filed by the petitioner on behalf of the beneficiary for the same position, the petitioner submitted a letter dated February 8, 2001 indicating that it would pay the beneficiary \$12,000 per year and in a November 14 letter of the same year, that it would pay \$36,000 per year. In yet another letter submitted with the current petition and dated November 21, 2001, the petitioner indicated that it would pay the beneficiary \$24,000. As discussed, the beneficiary's actual Form W-2 for 2001 shows he earned approximately \$40,000, and that he reported his occupation on his Form 1040 as "maintenance." These differences raise questions as to the nature of the services that the beneficiary allegedly performed during the qualifying two-year period. 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. at 591. Additionally, the director noted in his decision denying the prior petition, that the beneficiary was present in the United States on an approved Form I-129 nonimmigrant petition as a P-1 musician. The petition had a validity period of September 13, 2000 to September 11, 2001. The director questioned in that decision whether the beneficiary could have worked full time with the petitioner during that same time frame. As discussed, the BIA has determined that an alien is not continuously carrying on the qualifying work if he or she is otherwise engaged. *Matter of Varughese*, 17 I&N Dec. 399.

The petitioner submitted no documentary evidence of the services performed by the beneficiary during the two-year period preceding the filing of the visa petition. The evidence submitted on appeal does not overcome the inconsistencies in the record regarding beneficiary's prior work experience. It is unclear whether the petitioner is a pastoral assistant, a maintenance worker, or a musician.

Beyond the director's decision, it is unclear whether the petitioner has extended a bona fide offer of employment or whether the beneficiary will be paid wages of \$12,000, \$24,000 or \$36,000. For this additional reason, the petition may not be approved.

The evidence does not sufficiently establish that the beneficiary was continuously employed in a religious occupation or vocation for two full years preceding 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.