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



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

MAR 04 2005

WAC 01 217 53500

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.

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 December 31, 2003. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a synagogue. 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 religious youth director. 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 or that it had the ability to pay the proffered wage.

Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit. Counsel indicated on the Form I-290B that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, more than 13 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

On appeal, counsel submitted a copy of a previously submitted letter.

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 un rebutted, 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 April 13, 2001. 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 its letter of March 29, 2001, the petitioner stated that the beneficiary had been working with the petitioning organization as a religious youth director since November 1998. According to the petitioner, the beneficiary organized and led prayer services, and organized and presented Judaic studies classes, seminars and meetings. The petitioner did not specify the number of hours the beneficiary worked or the compensation he received for his services.

In a request for evidence (RFE) dated November 15, 2001, the director instructed the petitioner to submit evidence of the beneficiary's work experience during the qualifying period, including a weekly breakdown of hours and duties and evidence of financial support that he received during that period. In response, the petitioner submitted a letter in which it stated that the beneficiary worked 40 hours per week and was paid \$1,100, which was reported on a Form-1099-MISC. Although the petitioner did not specify the frequency of the payments made to the beneficiary, for purposes of determining prior qualifying experience, we will accept that the payments were on a monthly basis.

The petitioner submitted a copy of a Form 1099-MISC, indicating that it paid the beneficiary nonemployee compensation of \$9,350 in 1999. The petitioner also submitted copies of the beneficiary's year 1999 and 2000 Form 1040, U.S. Individual Income Tax Returns. The year 2000 Form 1040 reflects that the beneficiary received compensation in the amount of \$13,200. The petitioner failed to submit the breakdown of duties and hours.

The director renewed his request for more details of the beneficiary's hours and duties in a second RFE dated June 7, 2002. In response, the petitioner stated that the beneficiary worked 40 hours per week with the petitioning organization pursuant to an R-1, nonimmigrant religious worker, visa. According to the petitioner's letter of July 24, 2002, the beneficiary's duties were as follows:

He was responsible for cultural, religious and torah Study for 20 hours per week. He organized the Youth Sabbath Prayer group . . . each Sabbath; this took 8-10 hours per week. He was also responsible for Youth Hebrew and Jewish Studies for [REDACTED] and [REDACTED] he worked at this Monday-Friday evenings for 2 hours each. During these sessions, he would also work with each student individually . . . He was paid \$1100 on a 1099 form.

The petitioner also submitted a copy of a Form 1099-MISC reflecting that it paid the beneficiary \$13,200 in nonemployee compensation in 2000.

Subsequent to the approval of the Form I-360, Petition for Amerasian, Widow or Special Immigrant, and in connection with his request for adjustment of status, the beneficiary executed a Form G-325A, Biographic Information, on which he indicated that he had been working for the petitioning organization since April 1999. The beneficiary also submitted a letter from the petitioner's director, [REDACTED] who stated that the beneficiary was "[c]urrently . . . work[ing] for us 20 hours per week, due to attending college . . . [The beneficiary's] schedule is Monday through Friday evenings for 2 hours each." A copy of a 2001 Form 1099-MISC indicates that the petitioner paid the beneficiary \$6,000 in nonemployee compensation.

The record contains a copy of the beneficiary's class schedule for the fall of 2003. However, the record contains no evidence to indicate when the beneficiary started college; however, on his year 2001 Form 1040, the beneficiary stated that he was a student and that he was self-employed.

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.

Despite unexplained inconsistencies in the record (such as the date the beneficiary began his employment with the petitioning organization), the petitioner submitted sufficient evidence in the form of a detailed work schedule and compensation to establish that the beneficiary worked full time during the two years immediately preceding the filing of the visa petition. The year 1999 Form 1099-MISC, which the director found deficient and which he believed established that the beneficiary worked part-time, reflects payment for 8 ½ months at the rate of \$1,100 per month. The year 1999 Form 1099-MISC, therefore, establishes that the beneficiary worked for the petitioner in a full-time salaried position as of the date the petition was filed.

The director also determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered 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 stated that it will pay the beneficiary \$22,000 per year. The petitioner submitted evidence that it has compensated the beneficiary at a rate of no more than \$1,100 per month. It submitted no evidence to establish its financial ability to pay the beneficiary the proffered amount.

Beyond the decision of the director, the petitioner has not established that the position qualified as that of a religious worker. Pursuant to 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.

The petitioner's evidence does not reflect that anyone held the position of youth director prior to the beneficiary assuming the duties. The evidence also indicates that the beneficiary was uncompensated for any work performed in the position prior to the filing of the visa petition. The record also reflects that subsequent to approval of the petition, the beneficiary began working a maximum of 20 hours per week. The record therefore does not establish that the position is traditionally a permanent, full-time, salaried occupation within the denomination. Further, the petitioner submitted no evidence that establishes that the position of youth director is defined and recognized by its governing body.

The petitioner has not established that the proffered position is a religious occupation within the meaning of the statute and regulation. This deficiency constitutes an additional ground for denial of the 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.