

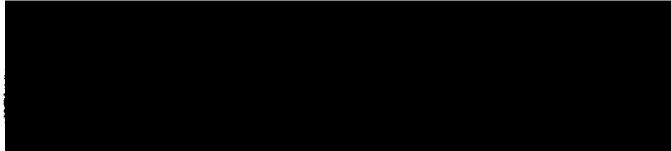
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE: [REDACTED]
SRC 01 010 51802

Office: TEXAS SERVICE CENTER Date: MAR 10 2005

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:

SELF-REPRESENTED

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, Texas 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 her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on December 22, 2003. 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 "consultant of literary minister." 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 the position qualified as that of a religious worker.

On appeal, the petitioner submits a letter and copies of previously submitted documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Attorney General (now 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 Esteime, . . . 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 Esteime*, 19 I&N 450 (BIA 1987)).

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 October 3, 2000. 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 September 28, 2000 letter accompanying the petition, the petitioner stated that the beneficiary would be “acting solely in carrying out the duties of consultancy in Literary Ministry.” The petitioner further stated

His primary duties will be in charge of advising the Portuguese speaking Christian community in the USA, which include[s] the orientation of all ages of the Christian material available in Portuguese for several different denominations. He will also perform additional duties

normally performed by a consultant, which include[s] seminars, Bible schools, Sunday Schools, and all different ministries at a church, orientation.

[The beneficiary] will also be the chain of connection between the publishing department of our denomination in Brazil and the Portuguese Speaking Assemblies of God in USA. He will be responsible in bringing to us the publications of *CPAD – Christian Publishers of Assemblies of God*, and send news about us to [it] as well.

In another letter of the same date, also submitted with the petition, the petitioner stated that the beneficiary's duties "at the main church" would be to provide worship service material ("hymns, Bible, etc."), materials for Bible study services, "to indicate and provide Sunday School Classes materials," and to select and provide all choir material. Other duties "with the ministry" would include preparing and conducting workshops and seminars on publishing "and all literature new material in Portuguese," selecting and preparing all materials (books, maps, publications Study Bibles") for the JWBC Bible College, and "developing the ministry" in all areas of the Portuguese speaking communities.

According to the petitioner, the beneficiary "pursued his vocation on behalf of CGADB – General Council of Assemblies of God in Brazil at CPAD – Christian Publishers of Assemblies of God the publisher department of the General Council (1996-2000), and continuing to present." The petitioner submitted a letter from the president of the Convenção Geral das Assembléias de Deus No Brasil, who stated that the beneficiary had, since 1996, worked in the Ministry of Literary and Publishing department of the CGABD and had a "large experience in Christian Education and leadership and workshops as well." The petitioner also submitted what appears to be pay vouchers for July and August 2000 from the Casa Publicadora Das Assembleias de Deus. However, these documents were not accompanied by English translations, which limit their evidentiary value.¹ The petitioner also submitted what appears to be a computer generated compilation of pay data for the beneficiary for the period January 1998 through January 2001, and October 2001 through December 2001. These documents were also not accompanied by English translations. Further, the dates in 1998 and January 1999 through October 1999 were written in by hand and contain no other indicia that the documents represented contemporaneous evidence of payments to the beneficiary for services rendered during that time frame.

The petitioner also failed to submit any evidence to establish the nature of the beneficiary's duties with CPAD, although the petitioner's senior pastor stated that the beneficiary reached the position of "managing in several areas with CPAD." 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).

Further, the record contains a copy of a certificate from the Superior School of Theology, which indicated that the beneficiary received a diploma in Theology, medium level in March 2000. The evidence does not

¹ The regulation at 8 C.F.R. § 103.2(b)(3), requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

indicate when the beneficiary began his matriculation at the school, but a transcript of the courses indicate that the beneficiary received credits over three separate academic periods.

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.

On appeal, the petitioner states that the beneficiary's diploma from the Superior School of Theology was obtained via mail. However, the petitioner submitted no evidence to corroborate this statement. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190. The petitioner also submitted translations of the computer generated pay summary. The documents indicate that the beneficiary's position in 1998 and 1999 was that of a store manager.

The evidence is insufficient to establish that the beneficiary was continuously employed as a literary consultant for the ministry for two full years prior to the filing of the visa petition.

According 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. The director determined that the proffered position involved the administrative and secular sales of literature.

We concur with the director that the beneficiary's prior experience appears to have been in the nature of selling books. However, the petitioner's enumeration of the duties of the proffered position indicate that the primary focus of the job is to advise the Portuguese speaking community of the availability of Christian materials in Portuguese and to provide religious material for church services, Sunday school, bible study and materials for the choir. The beneficiary is also expected to hold seminars and workshops on publishing and to "develop the ministry."

The record is unclear as to the autonomy that the beneficiary will exercise in selecting the various materials; however, the duties as stated appear to encompass ensuring only that the religious materials (such as hymnals and bibles) are available. Although the petitioner indicates the beneficiary will select material for the choir, the record does not reflect the beneficiary's qualifications to make musical selections for the choir and therefore raises questions as to the extent that he actually "makes" these selections. The record also does not establish the religious nature of the publishing seminars and workshops.

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.

In its letter of December 4, 2003, submitted in response to the Notice of Intent to Revoke, the petitioner stated that the beneficiary is a "literary minister," who "supports the educational theological area of the Brazilian churches." According to the petitioner:

[The beneficiary] is constantly counseling individuals and providing Christian group educational and vocational guidance services making decisions and solving problems, analyzing information and evaluating results to choose the best solution. He provides Literature consultation and advice [sic] others, providing guidance and expert advice.

The petitioner provides no evidence to expand upon the general and vague statements regarding the beneficiary's counseling, vocational guidance or problem solving duties as stated above. The evidence does not reflect the religious nature of these services or indicate the amount of time the beneficiary is expected to engage in such

services. The petitioner did not submit evidence to indicate that the proffered position is traditionally a full-time, salaried position within the petitioner's denomination.

The evidence is insufficient to establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage. This deficiency constitutes an additional ground for dismissal of the appeal.

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.

In a "Declaration of Income," Dr. José Wellington Bezerra da Costa of Convenção Geral das Assembléias de Deus No Brasil stated, "We clarify that the CPAD – Christian Publisher of Assemblies of God in Brazil ... is the provider of the financial support for the referred Minister for living expenses for him and his family sustenance as long as they are residing in this country and will monthly send to his [sic] the amount of US\$ 2,000." The petitioner also submitted copies of documents labeled "balance sheet detail" for August and September 2000, and copies of its checking account statements for June through August 2000.

The regulation states that the petitioner must establish that the prospective U.S. employer has the ability to pay the beneficiary the proffered wage. The regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence.

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.