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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
WAC 03 123 54039

Office: CALIFORNIA SERVICE CENTER

Date: MAR 11 2005

IN RE: Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Immigrant 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, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is the United Methodist 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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position sought immediately preceding the filing date of the petition.

On appeal, counsel states that the beneficiary possesses the necessary experience as he has been “continuously appointed” as a pastor during the requisite period.

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) 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.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on March 11, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of his intended position throughout the two years immediately prior to that date, the period covering March 11, 2001 through March 11, 2003.

In a letter accompanying the initial filing, [REDACTED] Fresno District Superintendent for the petitioning church, states that the beneficiary has been appointed to serve the petitioner as a pastor since 2003.

A second letter, dated May 15, 2002, submitted by ██████████ of the beneficiary's previous church in the Philippines, states that the beneficiary "needs an appointment to help him support his studies and family."

On November 24, 2003, the director instructed the petitioner to submit additional documentary evidence to establish the nature and extent of the beneficiary's religious work during the two-year qualifying period. In response, Ms. ██████████ states:

The [beneficiary] is an ordained elder in the United Methodist Church. He was appointed by Bishop ██████████ to the Fresno Christian Fellowship United Methodist Church in Fresno California effective July 1, 2002. As appointments are made annually, according the Discipline of our church, [the beneficiary] was appointed again on July 1, 2003 and I expect that he will be appointed on July 1, 2004; that is his request, the request of the church and my recommendation. His current compensation is \$38,522 which includes cash salary, housing allowance and utilities. In addition, [the beneficiary] receives health insurance for himself and his family. The church provides for \$3,288 of accountable professional reimbursements. It is [our] expectation and experience that a pastor in a full-time appointment such as [the beneficiary] works from 50 to 60 hours a week.

The petitioner's initial submission contained little substantive information about the beneficiary's activities prior to his August 2001 entry into the United States. The petitioner's response to the request for evidence contained no additional information about that period. The record does, however, contain a document entitled "Work History of [the beneficiary] (March 11, 2001 – June 30, 2002)." There is no indication of when this document was compiled or who compiled it. The document indicates that from March 11, 2001 through June 30, 2001, the beneficiary worked for the Angono United Methodist Church as an Administrative Pastor in the Philippines. The document further indicates that from July 1, 2001 through August 31, 2001 the beneficiary had been "appointed to study" and that during this period he was preparing for this "endeavor." From September 1, 2001 through June 30, 2002 the beneficiary was a full-time doctorate student. In addition to his studies, the document reflects that the beneficiary also worked part-time as a teacher's assistant, in a library, and as a cashier in the seminary cafeteria.

The director denied the petition, stating that because the beneficiary was a student rather than a full-time pastor for much of the qualifying period, the beneficiary had not satisfied the two-year continuous experience requirement.

On appeal, Ms. ██████████ states that to work as a pastor in the United Methodist Church, a pastor must have an appointment and argues that the beneficiary "has been continuously 'appointed' since 1989."

The record amply and unambiguously shows that the beneficiary seeks to enter the United States in order to carry on the vocation of a pastor in the United Methodist Church; however, section 101(a)(27)(C)(iii) of the Act requires that the beneficiary "has been carrying on such vocation" throughout the two-year qualifying period. Here, the beneficiary has not been carrying on "such vocation." Rather, he has been undergoing training and continuing his studies. Part-time ministerial work by a student is not continuous experience as a minister. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Further, although Ms. ██████████ asserts that the beneficiary "was still ordained" and "had the privileges of an ordained minister in the United Methodist Church," there is no evidence that the beneficiary was actually performing the duties of a pastor during the time he was attending school. Instead, as noted previously, the

record demonstrates the beneficiary was employed in non-religious positions such as a cafeteria and library worker, not as a pastor, while attending school as a full-time graduate student.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien “has been carrying on such . . . work” throughout the qualifying period. An alien who seeks to work as a pastor has not been carrying on “such work” if the alien has been a student and not carrying on the duties of a pastor for much of the preceding two years.

Even if the beneficiary’s experience in the United States could be considered qualifying, the record does not conclusively establish the beneficiary’s employment prior to coming to the United States. The letter from Bishop [REDACTED] does not describe the duties performed by the beneficiary. Further, there is no evidence which demonstrates that the beneficiary worked full-time work or was remunerated for his work in the Philippines. 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 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.