

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

01

[Redacted]

FILE: [Redacted]
EAC 01 173 53574

Office: VERMONT SERVICE CENTER

Date: MAR 28 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:

[Redacted]

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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

The director found that as the beneficiary had no Social Security Number and without copies of the beneficiary's Forms W-2, Wage and Tax Statements, and her individual tax returns, the evidence did not establish that the beneficiary had ever worked for the petitioner. The director therefore determined that the petitioner had not established that the beneficiary had been continuously employed in a religious occupation or vocation for two full years preceding the filing of the visa petition.

On appeal, the petitioner submitted a February 28, 2001 statement from [REDACTED] the national overseer of the Church of God True Grape Wine, Inc., in Santo Domingo, Dominican Republic. [REDACTED] stated that the beneficiary served as a pastor at a church in Saint [REDACTED] from 1996 and continuing as of the date of his letter. The record is unclear as to when the beneficiary began her association with the petitioning organization; however, the record reflects that the beneficiary entered the United States on October 9, 2000 pursuant to a B-2, temporary visitor for pleasure visa. The record does not indicate that the beneficiary has departed the United States since her entry in October 2000.

In its previous decision, the AAO determined that the petitioner had not adequately established the beneficiary's qualifying two-year work experience as it was not possible for the beneficiary to be employed in the Dominican Republic while residing in the United States. The AAO further held that the petitioner had not established that the beneficiary's work in the Dominican Republic was full-time and salaried, and that the [REDACTED] statement indicates the beneficiary was supported only by love offerings and tithes.

On appeal, the petitioner submitted copies of the beneficiary's 2001 federal and state income tax returns. In its previous decision, the AAO noted that the returns were not filed until 2002 and that the beneficiary claimed on her returns that she was self-employed. The AAO held that as the beneficiary claimed compensation as a self-employed individual, the evidence did not establish that she was a full-time salaried employee of the petitioning organization. The AAO therefore held that the petitioner had not established that the beneficiary had worked full time in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

We withdraw that portion of the AAO's previous decision holding that self-employment is not qualifying employment for the purpose of meeting the two-year experience requirement. It is incumbent upon the petitioner, however, 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).

On motion, the petitioner submits an affidavit from the beneficiary, who states that after she came to the United States in October 2000, she continued to work for the church in the Dominican Republic by counseling her parishioners over the telephone, "just as [she] did back in the Dominican Republic. The beneficiary stated that she began to work for the petitioning organization in January 2001. The petitioner also submitted a September 14, 2003 statement from [REDACTED] who stated that

[The beneficiary] ended her pastoral work in the church . . . in 2001, because [she] did not return from the United States, and upon her not returning we named another pastor in the Church. Until 2001 the Pastor communicated with the congregation, maintaining her position until 2001.

The churches in our organization and all religious institutions that are non-lucrative observe the system of tithes and offerings for sustaining their ministers and missionaries. [The beneficiary] received a pastoral salary in the churches in which she discharged her functions as a minister . . . From 1996 until 2001 she received \$RD 4,600 monthly in the church Ingenio Consejo, [REDACTED]

The petitioner submitted no corroborative evidence such as canceled paychecks, pay vouchers or other documentary evidence to substantiate the beneficiary's employment with the church in San Pedro de Macoris. Further, it is obvious from the record that the beneficiary did not work full time for the San Pedro de Macoris church after her arrival in the United States in October 2000.

On motion, the petitioner stated that the beneficiary has worked full time as a pastor with the petitioning organization since 2001, and submitted copies of "receipts" reflecting that it paid the beneficiary \$350.00 per week from January through May 2001.

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.

As the petitioner has not submitted corroborative evidence of the beneficiary's employment in the Dominican Republic and failed to submit evidence that the beneficiary worked full time as a pastor from the date she entered the United States until she began working for the petitioner in January 2001, the evidence is insufficient to establish that the beneficiary worked continuously as a pastor for two full years prior to the filing of the visa petition.

In its previous decision dismissing the appeal, the AAO found that the petition was not approvable based on an additional ground not cited in the director's decision. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F. 3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). Because the AAO dismissed the appeal on multiple alternative grounds, the petitioner can succeed on motion only if it overcomes all of the AAO's enumerated grounds. *See, e.g., Spencer Enterprises, Inc. v. U.S.* 229 F. Supp.2d at 1037. The additional ground raised by the AAO in its previous decision was the petitioner's failure to establish that it had the ability to pay the beneficiary the proffered wage.

On motion, the petitioner submitted sufficient evidence to establish that it has the ability to pay the beneficiary the proffered wage.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. The previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of September 12, 2003 is affirmed. The petition is denied.