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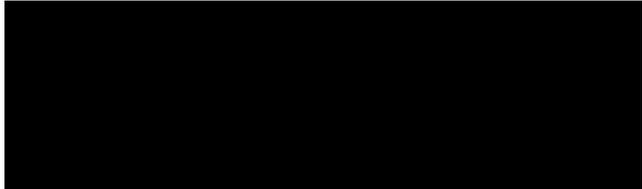
U.S. Department of Homeland Security  
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**U.S. Citizenship and Immigration Services**

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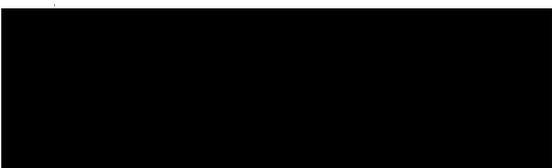


FILE: LIN 03 170 51787 Office: NEBRASKA SERVICE CENTER Date: **MAY 23 2005**

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:



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.

*Mani Johnson*

for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska 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 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 an associate 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.

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 May 1, 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 May 1, 2001 through May 1, 2003.

Copies of the beneficiary’s passport and Form I-94, Arrival and Departure Record, contained in the record indicate that the beneficiary entered the United States as early as August 31, 2000 as an R-1 nonimmigrant.

In a letter accompanying the initial filing, Keith Herron, senior pastor of the petitioning church, describes the position offered to the beneficiary:

The position served by [the beneficiary] will be as an Associate Pastor to the Russian Community. The duties include the following:

1. Prepare for and conduct weekly services for the Russian speaking congregation;
2. Deliver sermons, and prepare extensively for sermons;
3. Visit families in the congregation;
4. Administer sacraments;
5. Give blessings and benedictions;
6. Visit the sick; and
7. Engage in regular evangelistic campaigns to the Russian speaking community here in Kansas City and throughout the United States.

This is a full-time ministry assignment. [The beneficiary's] compensation package will be between \$20,000 and \$24,000 per year.

Senior Pastor Herron also describes the beneficiary's prior work experience. He states:

[The beneficiary] was ordained by the Church on May 5, 2002 at Kansas City, Missouri. He also completed his Master of Divinity Program at the Nazarene Theological Seminary in May 2002.

\* \* \*

Although [the beneficiary] graduated from a Nazarene Seminary, he has been a member of the Baptist Church since he was a youth. He has been a member of the Holmeswood Baptist Church since May 23, 2001, and before that was a member of two different Baptist Churches in Germany, from 1991 to 1998 with the Evangelical Baptist Brethren Church in Dueren, and from 1998 to 2000, with the Evangelical Christian Fellowship in Gummersbach (also a Baptist Church). Since that time, [the beneficiary] has been an active member of our church.

\* \* \*

In 1998, [the beneficiary] began attending seminary as described above. While attending seminary, [the beneficiary] helped establish the Russian Ministry in the Kansas City area and continued in active evangelism to Russian speaking persons in the United States. He has been traveling to approximately sixty (60) to seventy (70) churches a year holding evangelistic meetings and leading in worship. At our local church, he serves as a Pastor to the Russian speaking community, a position he has been engaged in since his ordination in May 2002. His duties in this regard include preaching, teaching, evangelism, administration of sacraments, visitation of the sick, and other duties traditionally associated with a person serving as an ordained minister of the Gospel.

\* \* \*

We are attaching documentation from New Fields Ministries detailing [the beneficiary's] evangelism travels and ministry assignments throughout the U.S. since January 15, 2000 through February 2003 . . . New Fields Ministries is a ministry that works closely with

our church and other Baptist churches in sponsoring pastors to ethnic Russian communities. Note also that [the beneficiary] attended seminary at Nazarene Theological Seminary on a full time basis since Fall 1998 through Spring semester 2002. he continued in ministry during that time and his continuing theological education at the seminary was paid in full through scholarship during this time.

The record further contains a letter from [REDACTED] Chair of the Finance Committee of the New Fields Ministries which indicates that the New Fields Ministries "paid for the expenses [the beneficiary] had in 2001-2002. It included travel, gas, insurance, utilities, telephone etc. This is estimated at about \$6000 per year." No documentary evidence such as receipts, cancelled checks, or paystubs was submitted to substantiate [REDACTED]'s claim that the beneficiary was paid for his expenses. Moreover, [REDACTED] does not describe the duties performed by the beneficiary or make any other claim about the beneficiary's duties from 2002 to the time of filing in May 2003.

The petitioner also submitted a faxed copy of the beneficiary's "Ministry involvement for 2000-2003." The document appears to have been prepared by the beneficiary and gives no indication of when this document was prepared. There is no reason to believe that the "work history" constitutes persuasive, contemporaneous evidence of the beneficiary's work during the requisite period.

As the petitioner did not submit any documentation from the qualifying period that unambiguously establishes the beneficiary's full-time work as an associate pastor, on October 29, 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, the petitioner submits a second letter from Andrey Popov, detailing the beneficiary's duties during the qualifying period. [REDACTED] indicates that the beneficiary's duties "included but were not limited to: continuous study, visitation of the sick, serving the sacraments, overseeing the preparation of services, marriage and young adult counseling, etc." As it relates to the beneficiary's remuneration, [REDACTED] asserts that the beneficiary's "support during this time came from 'love offerings' in the churches he visited," and that "starting September 2000 New Fields has compensated [the beneficiary's] ministry by paying his rent and utility bills with an average of \$600 per month. In addition New Fields has provided for transportation and covered the travel expenses of [the beneficiary]."

Mr. Popov further states:

Although [the beneficiary] was also involved in graduate seminary studies during this time, the pastor and ministry activities easily consumed 35+ hours per week. This work was done in conjunction with the ministries of New Fields as well as Holmes Wood Baptist Church and the Blue River Kansas City Baptist Association. It should be noted that [the beneficiary] participated in over 60 worship services in 2000, over 100 worship services in 2001, and over 100 worship services in 2002. For someone ordained to the ministry with responsibilities for preaching and teaching, preparation for each service would typically be at least 5 – 8 hours of work. Because much of his work involved evangelistic and revival services with churches in other cities, most of his time was also spent in traveling.

The petitioner also submits additional letters from people describing the petitioner's work during the qualifying period. Pavel Khakimov, Vice President of the Pacific Coast Slavic Baptist Association states that

“for the last 5 years [the beneficiary] has been visiting the churches of our Pacific Coast Slavic Baptist Association. His preaching, testimonies and music have been a blessing for all of our churches. [The beneficiary] participated in youth conferences and evangelistic services . . . .” Vitaly Korchevsky, President of the Russian Ukranian Evangelical Baptist Union, states that the beneficiary “was a main speaker at many of our youth conferences, visited more than 50 Russian speaking churches around the country . . . .” A third letter, signed by the President, Senior Vice President, and Vice President of the Slavic Baptist Association, states that the beneficiary “was actively involved in services like youth conferences, pastors’ conferences, church strengthening, missionaries and etc. Besides the duties he has as an associate pastor in Kansas City at Holmeswood Baptist Church, he is a regular speaker at our Evangelistic campaigns throughout the United States.” The remaining letter, a second letter written by Oleg Kuksenko, President of the Slavic Baptist Association, states that the beneficiary’s work has “varied from musical services to preaching and teaching among our congregations.”

The director denied the petition based on a determination that the beneficiary had not satisfied the two-year continuous experience requirement. Specifically, the director noted that the beneficiary had not been continuously performing the duties of an *ordained* minister during the qualifying period.

On appeal, counsel for the petitioner asserts that the director’s decision erroneously applies the law. Counsel argues:

A certificate of ordination is one piece of evidence that may be requested to determine whether the person has carried on the activities of a minister for the past two years and whether that person is authorized to perform the duties normally associated with someone who is a minister. [The beneficiary] is an Evangelist and Minister and has had the commissioning of the Baptist Church for that ministry long before he was ordained and the ordination was only the sign of the authority that had already been given to him to carry out these activities.

The petitioner submits a letter indicating that the beneficiary was not required to be ordained for the ministry he performed, but that his position was nonetheless a ministerial position. The petitioner refers to certificates previously submitted which indicate that the beneficiary has been authorized to serve as a preacher since 1992 and an evangelist since 1998.

We find these arguments to be persuasive. The evidence in the record reflects that the beneficiary’s ordination did not change the duties for which he was responsible. The record reflects that the beneficiary’s past duties and proposed duties involve the same responsibilities, such as preaching and evangelizing. This finding, however, does not conclusively establish that the beneficiary was continuously engaged as an associate pastor during the requisite period.

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 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 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. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 1963).

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 salaried. To hold otherwise would be contrary to the intent of Congress.

In this instance, although [REDACTED] indicates the beneficiary has received "love gifts" as well as compensation in the form of rent, utility bills, transportation and travel expenses, the record contains no documentary evidence to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Although there may be other limited circumstances in which unpaid work may constitute qualifying experience, the burden of proof remains on the petitioner to establish that the claimed work took place continuously.

Even more detrimental to the petitioner's claim of the beneficiary's continuous employment is the fact that the beneficiary was a student during much of the requisite period. Although we find the record amply reflects that the beneficiary seeks to enter the United States in order to carry on the vocation of a minister, 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).

The petitioner's assertion that the beneficiary's ministerial work "easily consumed 35+ hours per week" while he was pursuing his graduate seminary studies is not persuasive. While we agree that it is possible for the beneficiary to both work and study on a full-time basis, there is no evidence to show that the beneficiary did, in fact, work on full-time basis, despite his studies, in order to meet the full-time employment requirements of the regulation. As noted previously, the petitioner's unsupported statements do not meet the burden of proof in this proceeding. *Matter of Treasure Craft* at 190. [REDACTED] own assertions indicate that the beneficiary's responsibilities including preparation, preaching, and teaching "would typically be at least 5 - 8 hours of work." The petitioner's attempt to add the time the beneficiary spent traveling in order to make the position appear to be full-time is not sufficient to meet the regulatory requirements.

As noted previously, the underlying statute at section 101(a)(27)(C)(iii), as well as 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. An alien who seeks to work as an assistant pastor has not been carrying on “such work” if the alien has been a student and not carrying on the duties of an assistant pastor for much of the preceding two years.

Therefore, although we do not agree with the director’s reasoning, we agree with his ultimate determination that the petitioner has failed to establish that the beneficiary was continuously engaged as an associate pastor for the two years immediately preceding the filing of the application.

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.