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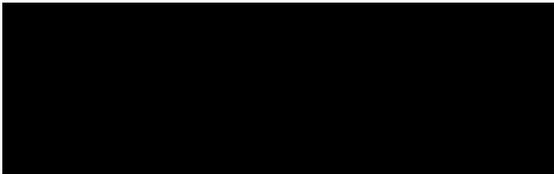
U.S. Department of Homeland Security
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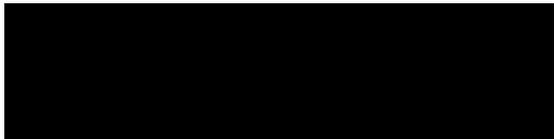
FILE: [REDACTED]
WAC 04 042 52522

Office: CALIFORNIA SERVICE CENTER Date: NOV 02 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:



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, California Service Center, and 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 minister and pastoral assistant. 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.

On appeal, counsel submits additional documentation.

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 issue presented on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) 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 December 2, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In a December 1, 2003 "Letter of Intention," the petitioner stated:

[The beneficiary], as a Minister and Pastoral Assistant's duty will be following. She will provide an opportunity for children and youth to participate[. She] does conduct Bible Study Sessions, discussion groups and retreats. Also she does plan religious mission studies and activities, being responsible for development of religious programs, organizing and promoting religious education to church members. She does create religious study courses and provide spiritual counseling and guidance and assistance to church members. Also she does make Bible Study Book on text and other material for Sunday school and After Academy Program. Also, she does teach and educate other religious instructors of the church with in Bible, new project program and special activities.

The petitioner submitted a December 1, 2003 "certificate of employment" indicating that the beneficiary had worked as a licensed minister/pastoral assistant with the petitioning organization from October 2003 to "present." The petitioner also submitted the beneficiary's weekly work schedule. This schedule reflected duties that include Sunday school youth worship and bible study, early morning and Wednesday evening worship, leading bible study groups, writing educational "Q.T." guide textbook book for Sunday school students, developing and diversifying the religious educational program, participating in the street mission, assisting in pastoral care, presiding over Friday worship, and spiritual counseling for youth. The petitioner submitted no evidence of the beneficiary's role in the worship services.

A monthly schedule indicated that the beneficiary's reported duties with the petitioning organization and those of the proffered position were more related to religious education and included such duties as planning and leading the religious education program for children and youth, planning the development and implementation of the curriculum, recruiting and planning the training of other religious educational instructors and volunteers, planning adult bible study, recruiting Sunday school instructors and volunteers, and preparing classroom materials for Sunday school. None of the schedules indicated that the beneficiary worked as a minister, which the regulation at 8 C.F.R. § 204.5(m)(2) defines as:

[A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The petitioner submitted a copy of a "verification" that the beneficiary had been appointed as a licensed minister with the 37th Seoul Kangnam District Conference of Korea Evangelical Holiness Church. The petitioner submitted no evidence that the beneficiary had been licensed to minister in its own organization and did not specify the duties authorized to be performed by a licensed minister. Further, the evidence submitted with the petition did not establish that the beneficiary had performed any of the sacerdotal duties normally performed by members of the clergy.

The petitioner submitted partial copies of the beneficiary's Forms 1040, U.S. Individual Income Tax Returns, for 2001 and 2002, that she filed jointly with her husband. The beneficiary identified her occupation on the tax returns as "clerk."

In response to the director's request for evidence (RFE) dated November 29, 2004, the petitioner stated in a letter dated January 25, 2005, that the beneficiary had worked for the Disciples Presbyterian Church as a licensed minister/education director from December 2, 2001 to November 1, 2003. The letter does not appear to address the beneficiary's specific duties with the Disciples Presbyterian Church. The petitioner submitted copies of Forms W-2, Wage and Tax Statements, issued to the beneficiary by the Disciples Presbyterian Church, reflecting wages of \$16,500 in 2003; \$23,700 in 2002; and \$15,000 in 2001. A 2003 Form W-2 issued by the petitioner reflects wages of \$4,000. Check stubs reflecting payments by the petitioning organization do not reflect the purpose for which the checks issued. The beneficiary's year 2003 Form 1040 again reflects that her occupation is that of "clerk." The petitioner also submitted copies of checks from the Disciples Presbyterian Church; however, these checks do not indicate the nature of the beneficiary's services with the Disciples Presbyterian Church. We note further that the Disciples Presbyterian Church filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, (WAC 02 100 54272) on January 30, 2002, on behalf of the beneficiary, which was approved by the Director, California Service Center. However, by letter dated July 14, 2003, the Disciples Presbyterian Church informed Citizenship and Immigration Services (CIS) that the beneficiary was no longer associated with the church and withdrew its petition on her behalf.

In response to the RFE, the petitioner stated:

The primary focus of this position was to develop and lead all aspects of ministry for our congregation. This position is responsible for planning and implementing worship for multiple weekend services, as well as other special services . . . In addition, this position was responsible for carrying on the position of a Minister in charge of Sunday school.

Also in this response to the RFE, the petitioner stated that the responsibilities of the position included conducting and leading regular worship services; conducting special ceremonies such as weddings, funerals, and confirmations; preparing and delivering sermons; conducting religious education classes; facilitating bible study sessions, church discussion groups and retreats; training and educating other religious instructors, overseeing and coordinating the Sunday school curriculum and activities; and researching and developing bible study teaching methods and youth counseling guides for Sunday school teaching staffs.

In discussing the beneficiary's qualifications in its RFE response, the petitioner indicated that the proffered position was that of licensed minister/*education director*, a different position than that which had been previously described as the proffered position (licensed minister/*pastoral assistant*). Additionally, the duties now described by the petitioner provided a more expansive "ministerial" role, such as delivering sermons and conducting wedding, funeral and confirmation ceremonies.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

Although the petitioner stated that the beneficiary was qualified for the position as a licensed minister based on her education and experience, it submitted no evidence that the beneficiary is a licensed minister with the petitioning organization. The petitioner submitted no documentary evidence to corroborate the role of the beneficiary in the petitioning organization. Thus, the record is unclear as to the duties that the beneficiary actually performed for the petitioner and offers no evidence of her job at the Disciples Presbyterian Church.

Further, it is noted that the partial copies of the beneficiary's Forms 1040 for the years 2001 and 2003, both of which relate to the qualifying period, reflect that the beneficiary requested Lifetime Learning Credits of \$576 in 2001 and \$354 in 2003 based on payment of tuition and related expenses for her own higher education. Based on copies of checks contained within the record, it appears that she was a student at Fuller Theological Seminary. Accordingly, it is unclear to what extent the beneficiary has been in the United States as a religious worker, as her nonimmigrant visa classification permits, and to what extent she has been engaged in studies as a student within the United States.

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 Disciples Presbyterian Church is no longer in existence, and that the beneficiary cannot get "official documentation" from that organization to verify her employment. The petitioner submits an April 18, 2005 letter from [REDACTED] who states that he was a licensed minister with the Disciples Presbyterian Church and can attest to the beneficiary's work history there. Mr. [REDACTED] purports to provide a breakdown of the duties performed by the beneficiary and the percentage of time that she was engaged in performing them. However, according to the petitioner, the beneficiary's supervisor at the Disciples Presbyterian Church was [REDACTED], the "Head minister." Mr. [REDACTED] other than claiming that he was also a licensed minister at the church, provided no evidence of his authority or knowledge to make a detailed statement of the beneficiary's work. Additionally, in her declaration submitted on appeal, the beneficiary states that her job was to "provide the pastoral support of the church." She describes her duties to include bible study, discussion groups, development of religious programs, and creating religious study courses. The beneficiary does not state that she performed any services traditionally performed by a minister.

Further, Mr. [REDACTED] claims that the beneficiary worked for the Disciples Presbyterian Church from December 2, 2001 to November 1, 2003. However, in a July 14, 2003 letter, Rev. [REDACTED] another Form I-360 petition filed by Disciples Presbyterian Church on behalf of the beneficiary on the basis that the beneficiary had already left that organization. The contradictory claims regarding the beneficiary's work history with Disciples Presbyterian Church are unresolved. It is incumbent upon the petitioner 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner also submitted a statement from the Korean American Presbyterian Church General Assembly and an "endorsement" from a group of ministers who attest that the beneficiary was a licensed minister at both the Disciples Presbyterian Church and the petitioning organization. However, no evidence in the record corroborates that the beneficiary's duties were that of a minister. In another document labeled "certification of employment," several individuals state that they were "main members of Disciples Presbyterian Church" while the beneficiary served there, and that she co-founded the church in March 1997 with [REDACTED]. No evidence of record substantiates these "signatories" claim of being "main members" of the church. Further, their enumeration of the duties of the beneficiary does not support a claim that she served in the capacity of a minister.

On appeal, the petitioner submitted a statement from the certified public accountant (CPA) who prepared the beneficiary's tax returns. According to the CPA, he typed the beneficiary's occupation as "clerk" on her 2002

and 2003 tax returns because that was the occupation listed on her 2001 return. This "certification" by the CPA does not explain why the beneficiary claimed her position was that of a clerk in 2001, when she allegedly worked as a minister with (and was a founding member of) the Disciples Presbyterian Church.

The petitioner submitted no verifiable documentary evidence of the work performed by the beneficiary during the qualifying two-year period. In response to the RFE, the petitioner expanded the duties of the proffered position. Further, correspondence in the record from the Disciples Presbyterian Church indicates that the beneficiary ended her association with that organization prior to July 14, 2003. The petitioner stated that the beneficiary did not begin her association with the petitioning organization until October 2003.

Based on this inconsistent evidence and no uncontroverted documentary evidence of the work performed by the beneficiary, the record does not establish that she was continuously employed as a licensed minister/pastoral assistant for two full years immediately preceding the filing of the visa 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.