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U.S. Citizenship
and Immigration
Services

CI



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 19 2005**
WAC 04 049 51119

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 school. 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 vice principal/elementary religion coordinator. The director determined that the petitioner had not established that the position qualified as that of a religious worker or 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 a brief and 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 first issue on appeal is whether the position qualifies as that of a religious worker.

According to the regulation at 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 as a religious worker. 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 1, 2003, the petitioner outlined five areas of responsibility for the proffered position. These were:

1. "[P]roclaiming the gospel message," with duties including overseeing the Catechetical Ministry Ongoing Formation Program for teachers and other catechists, planning in-services for the faculty in various areas of catechetics, maintaining school and teacher files, directing the religion program "through the completion/updating of the WASC/WCEA in depth study annually," facilitating the analysis and follow up of ACRE test results, supervising the implementation of the family life education program (including HIV/AIDS) in accordance with Archdiocesan guidelines, alerting faculty to resources for personal faith development and catechetical updating, and observing and evaluating the teaching and learning in religious classes.
2. "Furthering the faith community," with duties including facilitating communication between the school and parish regarding the religious education program, collaborating with the parish religious education programs, collaborating with the parish to provide ongoing faith formation of parents, planning and scheduling facilities needed for school events, planning and organizing events for Catholic School Week, and encouraging parents' participation in their children's religious formation by providing opportunities to become involved.
3. "Organizing worship experiences," which includes training parents and faculty as "Extraordinary Ministers of the Eucharist;" meeting annually with the pastor and liturgy coordinator to plan and review liturgies, non-Eucharistic prayer celebrations, and reconciliation services; researching, organizing and distributing information on all religious services and liturgical seasons; planning and organizing celebrations of Catholic School week; overseeing the preparation and effectiveness of all liturgies, non-Eucharistic prayer celebrations and reconciliation services; planning seasonal liturgical activities for the community; and facilitating the development of the school guidelines for the sacramental programs.
4. "Providing service opportunities," which includes aiding in the implementation of activities designed to promote social responsibility through service, overseeing mission awareness and education programs, and providing educational opportunities that promote religious and lay Christian vocations.

5. "Implementing Archdiocesan policies and guidelines," including attending "regional/deanery" religion coordinator meetings, meeting with the faculty, and distributing information on Archdiocesan standards for the religion curriculum.

The petitioner stated that the proffered position was full-time with an annual salary in November 2003 of \$46,015.

The evidence sufficiently establishes that the proffered position is directly related to the religious creed of the Catholic Church, is defined and recognized, and that the position offers full-time, salaried occupation. The evidence is sufficient to establish that the position qualifies as that of a religious worker within the meaning of the statute and regulation.

The second issue 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 19, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a vice principal/elementary religion coordinator throughout the two-year period immediately preceding that date.

In its letter accompanying the petition, the petitioner stated that the beneficiary had been employed by the petitioning organization for over five years. It stated that her current employment is that of vice principal/elementary religion coordinator; however, the petitioner did not indicate when the beneficiary assumed that position. The petitioner submitted copies of the yearly contracts between the petitioner and the beneficiary for the school years beginning August 25, 2003. However, it submitted no similar documentation for the qualifying two-year period.

In his letter accompanying the response to the director's request for evidence (RFE) dated November 26, 2004, counsel stated that "[s]ince 2001, [the beneficiary] has been working as a Teacher, and presently as

Vice Principal and Religion Coordinator” with the petitioner. Counsel did not specify the beneficiary’s duties as a teacher and submitted no documentary evidence to substantiate his statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director found that the record did not establish the nature of the beneficiary’s teaching duties and therefore did not establish that her teaching duties were primarily religious in nature. The director noted that simply working as a teacher within a religious organization did not make the position automatically a religious occupation. The director thus determined that the petitioner had not established that the beneficiary’s qualifying experience was in the same or similar position as that of the proffered position.

On appeal, counsel appears to assert that the statute and regulations do not require that the qualifying experience must be in the same or similar capacity as that of the proffered position. Counsel states that in arriving at its conclusion that the beneficiary lacks the qualifying two years of continuous experience, CIS “contends that in order to satisfactory [sic] evidence two years of continuous employment 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.” [Emphasis in the original.] Counsel then argues that the beneficiary is not seeking entry into the United States to work in a vocation but rather to work in a religious occupation. However, we note that section 203(b)(4) of the Act and 8 C.F.R. § 204.5(m)(1) require the beneficiary to have two years continuous experience in the occupation for which he or she is seeking entry into the United States.

The petitioner submitted no evidence of any work performed by the beneficiary during the qualifying two-year period. 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)).

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 alleges for the first time that the beneficiary has served in the proffered position since 2001. The petitioner submits a copy of a letter from [REDACTED] Regional Supervisor Religion Coordinator for the Archdiocese of Los Angeles, who states that he can vouch for the beneficiary's employment in her present capacity since 2001. The petitioner also submits copies of flyers that it states is evidence of the beneficiary's work. However, the petitioner again failed to submit copies of canceled pay checks, Forms W-2, Wage and Tax Statements, copies of the beneficiary's income tax returns, copies of contracts with verified work schedules, or other similar evidence to corroborate employment by the beneficiary during the qualifying two-year period. *Matter of Soffici*, 22 I&N Dec. at 165.

The evidence does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage.

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.

The petitioner submitted no evidence of this regulatory requirement. Therefore, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage. For this additional reason, the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.



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ORDER: The appeal is dismissed.