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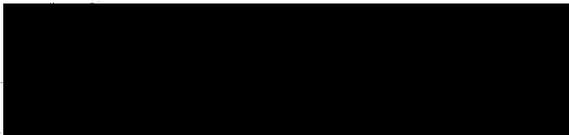
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 19 2005  
WAC 04 076 51319

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 missionary of education. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits a brief.

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 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 January 22, 2004. Therefore, the petitioner must establish that the beneficiary was continuously working as a missionary of education throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted copies of canceled checks that it made payable to the beneficiary in the amount of \$1,847 for the months of September through November 2003. Although counsel indicates these are copies of "payroll checks," the petitioner submitted no evidence of any work performed by the beneficiary during the qualifying two-year period.

The petitioner submitted a copy of a December 12, 2002 letter from [redacted] registrar of the South Baylo University in Anaheim, California, certifying that, on March 24, 2002, the beneficiary had completed the requirements for her Master of Science in Acupuncture and Oriental Medicine. The beneficiary's undated résumé indicates that she was admitted to the master's program at "Baylor" University in 1998 and was awarded her degree in 2002. The only experience listed by the beneficiary was during the period March 1994 to February 1997, as a missionary of education at the Korea Evangelical Holiness Church.

In response to the director's request for evidence (RFE) dated November 30, 2004, the petitioner submitted copies of lists reflecting the names and positions of its employees for 2002 through 2005. The petitioner also submitted a letter dated February 9, 2005, in which the senior pastor, [redacted] stated that the beneficiary "is currently employed as a Missionary of Education at our church at an annual salary of \$24,000. [The beneficiary] obtained her R-1 status in July 2003 and has been authorized to work for three years." Pastor Lee further stated:

In December of 2001 while she was completing her master degree program at South Baylor [sic] University, [the beneficiary] accepted our offer of a volunteering position and began to serve our church as Missionary of Education.

[The beneficiary's] primary duties included teaching and preaching [to] the children about the importance of having Christian faith . . . In addition, [the beneficiary] was assigned to developing and administering various programs for children, such as Dance for Church Mission Kindergarten, Pastoral Counseling, Song and Dance for Childhood Education, and Audiovisual Education. [She] also [is] actively involved in Bible Reading, Bible Study, and Bible Education for young children. [The beneficiary] volunteered 20 to 25 hours per week including Saturday and Sunday.

The petitioner also submitted copies of the beneficiary's Forms W-2, Wage and Tax Statements, for 2003 and 2004, reflecting that the petitioner paid her wages paid of \$8,000 and \$24,000 respectively. The petitioner also submitted copies of California Form DE-6, Quarterly Wage and Withholding Report, for the quarters ending September 2003 through December 2004. We note that, although the petitioner's lists of its employees' names reflect several dozen other employees, including the pastor and assistant pastor, the Form DE-6 reports wages only for the beneficiary. The petitioner submitted no evidence that these documents were ever filed with the appropriate authorities and does not submit a copy of the beneficiary's tax returns reporting wages earned by the beneficiary in 2003 and 2004.

In his letter accompanying the RFE, counsel stated that the beneficiary was dependent upon her "then-husband" for her support in 2002. The petitioner submitted a copy of the beneficiary's year 2002 Form 1040, U.S. Individual Income Tax Return, which she filed jointly with her husband. The return reflected total and adjusted income of \$13,618, of which approximately \$13,927 was from the husband's wages from Sox World, Inc. and a \$394 loss from swap meet activities. The petitioner also submitted copies of web pages from Nara Bank reflecting that \$10,000 was wired to the bank for the beneficiary on May 30, 2003.<sup>1</sup>

The petitioner submitted no other evidence, such as verified work schedules, to document any work performed by the beneficiary for the petitioning organization prior to September of 2003. 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

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<sup>1</sup> Other documentation reflecting wire transfers to the beneficiary is outside the relevant time period and therefore is not relevant to this petition.

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 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. 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.

Consistent with the requirements of the U.S. Department of Labor's Bureau of Labor Statistics and other regulations pertaining to employment based visa petitions, Citizenship and Immigration Services (CIS) holds that full-time employment consists of at least 35 hours work per week.

On appeal, counsel argues that the petitioner has submitted substantial evidence that the beneficiary was not dependent upon secular employment for her support during the qualifying two-year period. Counsel also asserts that, although the petitioner "estimated that the beneficiary volunteered 20 to 25 hours . . . those many hours spent on such activities as visiting young children at home or hospital, participating in outdoor religious activities, and group prayers . . . were not included in the 20 to 25 pat-time hours." Nonetheless, the petitioner submitted no evidence of any work performed by the beneficiary for the petitioning organization. *Matter of Soffici*, 22 I&N Dec. at 165. Further, the record does not reflect that these additional activities enumerated by counsel are part of the duties of the position as outlined by the petitioner. 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 Obaigbena*, 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 evidence does not establish that the beneficiary was continuously employed in a qualifying occupation or vocation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage of \$24,000.

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 stated that the beneficiary is currently employed at the church earning \$24,000 per year. As discussed above, the petitioner submitted copies of canceled checks indicating that it paid the beneficiary

\$1,847 during the months of September 2003 through November 2003. However, as this documentation precedes the filing date of the petition, it is not relevant to establishing the petitioner's ability to pay the proffered wage as of the filing date of the petition. The petitioner submitted copies of the beneficiary's 2003 and 2004 Forms W-2; however, it submitted no evidence that these documents were ever filed with the Internal Revenue Service, and submitted no evidence that the beneficiary reported these wages on a tax return.

The petitioner submitted copies of California Form DE-6; however, the record contains no evidence that these documents were properly filed with the Employee Development Department of the State of California. As these documents do not report earnings for any of the petitioner's employees other than the beneficiary, even though the petitioner provided lists of "employee names" showing several dozen employees in each year, the authenticity of this evidence is questionable. 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, 591-92 (BIA 1988).

Based on this conflicting information, the evidence does not sufficiently establish that the petitioner has been paying the beneficiary the proffered wage of \$24,000. The petitioner submitted no other documentation, such as audited financial reports or copies of its tax returns, to establish its ability to pay the proffered wage. For this additional reason, the petition may not be approved.

Further beyond the director's decision, the petitioner has not established that the position qualifies as that of a religious worker.

The alien must be coming to the United States at the request of the religious organization to work as a religious worker. 8 C.F.R. § 204.5(m)(1). 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).

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.

The petitioner stated that the duties of the proffered position include teaching and preaching to the children, developing and administering various programs for children, such as Dance for Church Mission Kindergarten, Pastoral Counseling, Song and Dance for Childhood Education, and Audiovisual Education, and that she is actively involved in Bible Reading, Bible Study, and Bible Education for young children. While some of the duties of the position appear to be religious in nature, the petitioner has not shown how song and dance or audiovisual education is related to a traditional religious function. The petitioner provides no details of the hours that the beneficiary spends in each of these activities but does state that the beneficiary's voluntary performance of these duties encompassed 20-25 hours per week

The evidence does not establish that the position is primarily religious in nature. Further, the petitioner has not established that the position is defined and recognized by the governing body of its denomination, or that the position is traditionally a permanent, full-time, salaried occupation within the denomination. This deficiency constitutes an additional ground for denial of the petition.

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.

**ORDER:** The appeal is dismissed.