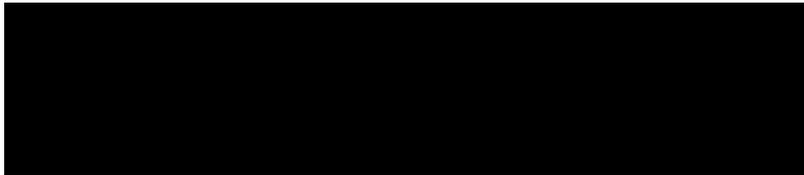


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



21

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **AUG 09 2006**
SRC 04 212 52861

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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Acting Director, Texas 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 an evangelist. The director determined that the petitioner had not established that the position qualifies as that of a religious worker, 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, that the petitioner has extended a qualifying job offer to the beneficiary, or that it has the ability to pay the proffered wage.

Counsel submits no additional documentation on appeal.

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 petitioner established that 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.

The proffered position is that of an evangelist. The petitioner stated that the duties of the position include personal evangelism, Christian counseling, choir, home visitation, testimony and exhortation, alter worker, and community outreach. The petitioner indicated that, in the proffered position, the beneficiary works more

than 40 hours per week; however, the petitioner did not indicate whether or not compensation was offered for the position.

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.

The petitioner submitted copies of pages from the website of the Church of God, which list “World Evangelism” as one of its divisions, and identify the sections as:

- Evangelism and Home Missions
- Evangelism – Black Ministries
- Evangelism – Cross-Cultural Ministries
- Evangelism – Hispanic Ministries (Editorial Evangélica)
- Evangelism – Southwest Indian Ministries
- Men/Women of Action
- Ministry to the Military
- World Missions

The petitioner, however, submitted no evidence that the individual position of “evangelist” is a defined and recognized position by the Church of Christ, or that it is traditionally a permanent, full-time, salaried occupation within the denomination.

In her request for evidence (RFE) dated March 18, 2005, the director instructed the petitioner to:

Provide published material about your religious denomination that shows which positions are considered religious occupations or vocations within the organization, and what are the position’s requirements. This must also include the normal amount of hours needed to complete this position’s requirements on a weekly basis.

In response, the petitioner stated in an undated letter that it “has no specified criterion as a standard to recruit except one is born again, one of impeccable character and reputation both inside of the church and the general community; has a solid and clear knowledge of the word of God.” The petitioner did not indicate that it currently had any employees, either salaried or unsalaried, other than its directors and its pastor.

The record contains a copy of a May 11, 2000 “evangelist certificate” issued to the beneficiary by the Mount Everest Holiness Church of God in Jamaica, and an August 6, 2000 “evangelism certificate” issued by the petitioning organization. The petitioner submitted no evidence that the position existed within the petitioning organization prior to the beneficiary assuming the position, and submitted no evidence indicating that the position of evangelist is a recognized and defined position within the Church of God, or that it is traditionally a permanent, full-time compensated position within the denomination.

Accordingly, the evidence does not establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

The second 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 August 2, 2004. Therefore, the petitioner must establish that the beneficiary was continuously working as a qualifying religious occupation throughout the two-year period immediately preceding that date.

Although the petitioner stated in its letter of July 24, 2004 that the beneficiary had “faithfully served our church since January 2001,” it did not indicate that she had served in the capacity of evangelist for the entire period stated. The petitioner submitted copies of the beneficiary’s Forms W-2, Wage and Tax Statements, indicating that it paid her approximately \$5,414 and \$6,892, in 2002 and 2003, and copies of the beneficiary’s Forms 1040A, U.S. Individual Income Tax Returns, for the same periods. The Forms 1040A indicate that the beneficiary claimed two children as her dependents and reflected that she earned no other income during that period. The petitioner submitted no other evidence to corroborate the beneficiary’s employment 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)).

In her RFE, the director instructed the petitioner to "Submit detailed time sheets, weekly time logs and schedules, work logs or reports, etc. clearly establishing that the beneficiary has performed the claimed religious services for the time period in question." In response, the petitioner stated that "the said organization does not have a weekly time logs [sic] and schedules; [the beneficiary] comes to work in an unstructured format." The petitioner submitted a copy of the beneficiary's 2004 Form W-2, indicating that it paid her \$8,534 in 2004, and a copy of the beneficiary's year 2004 Form 1040, on which she reported no other income. The petitioner submitted no corroborative evidence that the beneficiary performed the work claimed. *Id.*

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).

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, counsel states, "The petitioner has now demonstrated that the beneficiary has few monetary needs such that the meager salary paid to her by the petition is sufficient to demonstrate that she is not solely dependent on supplemental employment or solicitation of funds for support." However, we cannot agree with counsel that the petitioner has submitted sufficient evidence to establish that the beneficiary worked full time in the position of evangelist for two full years immediately preceding the filing of the visa petition. The petitioner submitted no evidence of the work performed by the beneficiary and does not keep track of her work or the hours that she allegedly works.

Further, we note that on December 30, 2002 and again on January 6, 2005, the petitioner filed an application for an extension of stay for the beneficiary as an R-1 nonimmigrant religious worker on Form I-129, Petition for a Nonimmigrant Worker. The petitioner indicated that it employed the beneficiary as an evangelist and that she would be paid a salary of \$200 per week, or \$10,400 annually. On the 2005 Form I-129, the petitioner

also stated that the beneficiary was actually paid a weekly salary of \$394, or approximately \$20,488 per year for 40 hours of work per week. As discussed above, the petitioner paid the beneficiary substantially less than it indicated on the Forms I-129. This casts doubt on the petitioner's employment of the beneficiary in a full-time capacity during the qualifying period. 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 evidence, therefore, is insufficient to establish that the beneficiary worked in a full-time capacity for the petitioner.

Accordingly, as the petitioner has failed to establish that the proffered position qualifies as that of a religious worker or that the beneficiary worked in a full-time capacity, the petitioner's evidence does not establish that the beneficiary was continuously engaged in a qualifying religious occupation for two full years immediately preceding the filing of the visa petition.

The third issue on appeal is whether the petitioner established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner stated that in the proffered position, the beneficiary works in excess of 40 hours per week. Although the petitioner submitted copies of Forms W-2 indicating that it paid the beneficiary \$5,414 in 2002, \$6,892 in 2003 and \$8,534, it did not establish a minimum wage for the position. Therefore, the petitioner has not established that it has extended a qualifying job offer to the beneficiary. Contrary to counsel's assertions on appeal, the record does not clearly reflect that the beneficiary's has few monetary needs and therefore is able to subsist on the salary paid to her by the petitioner. The evidence of compensation therefore does not establish that the position offers full-time employment.

Accordingly, the record does not establish that the petitioner has extended a qualifying job offer to the beneficiary.

The fourth issue on appeal is whether the petitioner established that it had the ability to pay 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.

As discussed previously, the petitioner submitted copies of Forms W-2 that it issued to the beneficiary in 2002, 2003 and 2004. However, as the petitioner did not indicate that it would pay the beneficiary a specified salary, this evidence is insufficient to establish that it has the continuing ability to pay the beneficiary a specific wage as of the filing date of the petition. Additionally, as discussed above, the petitioner has failed to pay the beneficiary the salary promised when it filed applications to extend the beneficiary's stay as an R-1 nonimmigrant worker. As the petitioner failed to pay the salary promised in connection with the beneficiary's R-1 status, it casts doubt on its ability to pay the beneficiary any specified wage. *See id.*

With the petition, the petitioner submitted copies of an unaudited financial statement for 2001 and 2002, accompanied by an accountant's compilation report. As these documents precede the filing date of the petition, they are not relevant in establishing the petitioner's ability to pay the beneficiary as of the date the petition was filed. In response to the RFE, the petitioner submitted copies of its Forms 941, Employer's Federal Income Tax Returns, for the quarters ending September and December 2004.¹ The documents are not probative of the petitioner's ability to pay as they do not indicate that wages paid to the beneficiary were included in the totals reported and they fail to establish that the petitioner has promised to pay the beneficiary a specified wage for her services and has paid her that wage in the past.

The evidence, therefore, does not establish that the petitioner had the continuing ability to pay the proffered wage as of the date the petition was filed.

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.

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.

¹ The petitioner also submitted copies of its Forms 941 for the quarters ending March and June 2004. However, as these documents also precede the filing of the visa petition, they are not relevant to establishing the petitioner's ability to pay the proffered wage as of the filing date of the petition.