

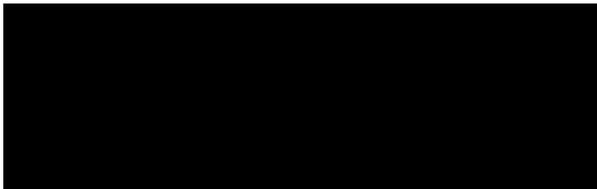
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**U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **FEB 23 2006**

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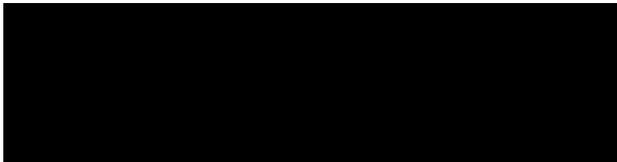
Petitioner:

Beneficiary:



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.

Mari Johnson

S 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 youth coordinator. 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, that the position qualified as that of a religious worker, that the petitioner had the ability to pay the beneficiary the proffered wage, or that it had extended a qualifying job offer to the beneficiary.

On appeal, counsel submits a brief and copies of previously submitted 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 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 February 13, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a youth coordinator throughout the two-year period immediately preceding that date.

In its letter of January 2, 2003, the petitioner stated that the beneficiary had “been serving” at the petitioning organization from January 1998 “to present.” The petitioner identified the beneficiary’s title as “Coordinator of the Youth Group,” and described the “job profile” as leading an effective youth ministry and working as a moral agent and social advocate for [REDACTED]. The petitioner did not specify the terms of employment for the beneficiary and submitted no evidence of 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)).

In a request for evidence (RFE) dated July 12, 2004, the director instructed the petitioner to:

Provide evidence of the beneficiary’s work history beginning February 13, 2001 and ending February 13, 2003 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer’s name, specific job duties, the number of hours worked, remuneration, level of responsibility and who supervised the work. Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remunerations. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported him or herself (and family members, if any) during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted a letter dated January 30, 2003, in which it stated that the beneficiary became a youth coordinator in January 1998 “and has continuously been serving until the present time.” In his letter accompanying the petitioner’s response, counsel stated that the petitioner’s compensation to the beneficiary for his services was in the form of “boarding.” Counsel submitted no documentary evidence to corroborate 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 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). Additionally, the petitioner submitted no

other evidence, such as boarding records, pay vouchers, canceled checks, verified work schedules, or other documentary evidence to corroborate any employment by the beneficiary during the two years immediately preceding the filing of the visa petition.

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.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

In his decision, the director noted that on his Form G-325, Biographic Information, dated February 19, 2002, the beneficiary indicated that he had been unemployed since January 2001. On appeal, counsel stated that the beneficiary stated that he was unemployed during that time frame because he was not receiving monetary payment for his work. The petitioner, however, again failed to submit documentary evidence of the beneficiary’s work with the petitioning organization. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner also failed to provide evidence of how the beneficiary financially supported himself during the qualifying two-year period.

The evidence does not establish that the beneficiary was not dependent upon secular employment for his support and does not establish that he was continuously employed as a youth coordinator during the two years immediately preceding the filing of the visa petition

The second issue is whether the petitioner established that the proffered 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 position is that of a youth coordinator. In its letter of January 30, 2003, the petitioner stated:

[The] duties [of the] Youth Coordinator will include the following: Lead the youth ministry so that they may have the opportunity to grow spiritually; teach religion by incorporating the [REDACTED] culture and language, history and tradition. He can interpret the Church teachings within the context of the very life and practice of the Church, which is absolutely required in an educational setting. He will coordinate youth activities through different Christian programs, provide counseling among the youth members, organize and supervise outreach programs in the community.

The petitioner stated that the beneficiary would be compensated at the rate of \$1,000 per month and will provide his services on a full-time basis.

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 a comprehensive description of the duties of the proffered position, the petitioner stated that the youth coordinator: coordinates youth in activities, encouraging and modeling a lifelong interest in learning, bringing youth "to a personal relationship with Jesus Christ," and embracing "problem youngsters" through Christian programs; assigns staff and administrators; supports youth by working with the parents, including leading private counseling and ensuring follow-up; supervises administrative work; and supervises fundraising programs.

Although the duties as described by the petitioner indicate some religious content, they reflect that the duties of the position are primarily secular in nature. Additionally the petitioner submitted no evidence that the position of

youth coordinator is defined and recognized by [REDACTED] for that the position is traditionally a full-time, salaried occupation within the denomination. The record contains no evidence that the position existed within the organization before the beneficiary began voluntarily performing the functions.

On appeal, counsel points out that religious counselors are included in the list of religious occupations specifically identified by the regulation. However, the evidence does not establish the nature of the counseling required to be performed in the proffered position. Simply giving a proffered position a title that's contained in the regulations will not serve to demonstrate that the actual position is qualifying. Counsel further asserts that the beneficiary serves three times a week as a deacon with the church, and that before each sermon, he teaches the youth the [REDACTED] that are essential to the church's ritual. Counsel further asserts that the beneficiary serves as a liturgy instructor, that he is responsible for implementing the religious directives, coordinating religious events that occur at the school, and writing the annual report that evaluates religion classes at the petitioning organization. The evidence of record does not support counsel's statements as to the beneficiary's responsibilities at "the school," and counsel's unsupported statements are not evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Furthermore, the position description does not indicate that the position requires designation as a deacon, and the beneficiary's performance as a deacon has no impact on the proffered position as defined by the petitioner.

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

The third issue on appeal is whether the petitioner 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 stated that it would pay the beneficiary \$1,000 per month. As evidence of its ability to pay this wage as of February 13, 2003, the priority date, the petitioner submitted a copy of its January 2004 monthly bank statement. The petitioner submitted no additional evidence on appeal.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence.

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

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

The director determined that, as the petitioner had not previously compensated the beneficiary for his work in the position, the evidence did not establish that the petitioner had extended a qualifying job offer to the beneficiary. We withdraw this determination by the director.

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.

As discussed above, the petitioner indicated that the position offered full time employment and would be compensated at the rate of \$1,000 per year. The petitioner indicated that the salary was intended to ensure that the beneficiary would have no need to seek supplemental employment. That the petitioner has not previously paid the beneficiary for his services in the position is not sufficient, in and of itself, to establish that the petitioner has not extended a qualifying job offer.

The evidence sufficiently establishes that a qualifying job offer has been tendered. Nonetheless, as the petitioner failed to establish that the beneficiary had been engaged in a qualifying religious occupation for two full years preceding the filing of the visa petition, that the proffered position qualified as that of a religious worker, or that it had the ability to pay the beneficiary the proffered wage, the petition may not be approved.

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.