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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 02 266 52414

Office: VERMONT SERVICE CENTER

Date: JAN 10 2006

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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The petitioner's subsequent motion to reopen or reconsider was untimely filed. On appeal, counsel submits documentation indicating that the petitioner filed an action in the United States District Court for the Eastern District of Virginia seeking to have the untimely motion considered. The district judge dismissed this complaint without prejudice upon a joint motion by the petitioner and Citizenship and Immigration Services (CIS). Pursuant to the motion to dismiss, CIS agreed to reopen the petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed on August 16, 2002 to "re-evaluate the merits of [the] petition." On motion, the director again denied the petition. The petitioner's motion to reopen or reconsider was forwarded to the Administrative Appeals Office (AAO) pursuant to 8 C.F.R. § 103.3(a)(2)(iv). The matter is now before the 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 educational missionary. The director determined that the petitioner had not established that the position qualifies 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 presented 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 regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters.

The job offer describes the duties of the proffered position as:

- a. Visit homes of congregation members, and teach and preach the bible to the members.
- b. Counsel members [on] personal problems and confers with clergy members, congregation officials, and congregation organizations.
- c. Analyze member participation, and change in congregation emphasis to determine needs for religious education.
- d. Develop study courses and plan congregational activities and project[s] to attract attention to, and encourage active participation in programs.
- e. Participate in such denominational activities as giving help to new congregations and small congregations.
- f. Provide spiritual guidance, prayer and counseling members.

The petitioner stated that the beneficiary's wage is \$300 per week and that it sought her services on a full-time basis.

The description of the proffered position indicates that the duties are consistent with those of a religious instructor. Further, the evidence indicates that this position exists in other churches in the petitioner's denomination. The evidence therefore sufficiently establishes that the position qualifies as that of a religious worker.

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. On appeal, counsel asserts that this was not a basis for the director's initial denial. However, the court dismissed the complaint based on the parties' agreement that CIS would reopen the proceedings to "re-evaluate the merits of [the] petition." Accordingly, the director was neither directed nor bound to consider only those issues raised in the initial decision.

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 16, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as an educational missionary throughout the two-year period immediately preceding that date.

In its letter of August 1, 2002, the petitioner stated that the beneficiary had worked as an educational missionary at Siloam Church from February 1996 to February 18, 2001, and at the Nakwon Reformed Church from December 18, 2001 until "the present time." The petitioner submitted a June 10, 2001 "certificate of employment" signed by the pastor of the Siloam Church, indicating that the beneficiary "had been employed for this church as an acting missionary" from February 18, 1996 to February 18, 2001. The petitioner submitted no evidence with the petition to document the beneficiary's work with the Siloam Church. 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 petitioner also submitted a copy of a July 16, 2002 "certificate of employment" from the Nakwon Reformed Church in Sunnyside, New York signed by its senior pastor, Reverend [REDACTED]. Reverend [REDACTED] "certified" that:

[The beneficiary] has been working for Nakwon Reformed Church as an educational missionary since her entry to the United States in February 2001. [She] worked for Nakwon Reformed Church as an educational missionary from February 2001 to December 2001 without payment on full-time basis. Since the approval of her R-1 status on December 19, 2001 . . . Nakwon Reformed Church has been paying for her full-time service as an educational missionary.

The petitioner submitted no evidence with the petition to corroborate the beneficiary's employment with Nakwon Reformed Church. *Id.*

In a request for evidence (RFE) dated April 25, 2003, the director instructed the petitioner to submit evidence to establish the beneficiary's prior work experience, and advised the petitioner that:

Documentation to establish the employment . . . of the beneficiary should consist of more than a statement. Objective documentary evidence, such as payroll records, tax return forms, contracts, etc., should be submitted to confirm the claimed employment dates and compensation for services performed.

If the past experience was gained on a volunteer basis, submit evidence that explains how the beneficiary supported herself/himself.

In the letter accompanying the petitioner's response, prior counsel stated:¹

The beneficiary has continuous two years of experience immediately prior to the petition date. The I-129 (R-1) petition was approved on December 19, 2001 based on the beneficiary's work experience from Siloam Church in Korea and Nakwon Reformed Church. The certificate of employment from Siloam Church has already been submitted. Therefore, enclosed are the certificate of employment from Nakwon Reformed Church and the beneficiary's Individual Income Tax Return 2002.

The petitioner resubmitted the July 16, 2002 letter from the [REDACTED] Reformed Church and submitted a copy of the beneficiary's year 2002 Form 1040, U.S. Individual Income Tax Return, on which the beneficiary indicated that she received \$15,500 from that organization. The Form 1040, however, is not dated or signed and does not indicate that it was filed with the Internal Revenue Service (IRS). According to prior counsel, the beneficiary's experience during the qualifying period was gained on a volunteer basis, and the beneficiary and her husband supported themselves financially with income received from her husband's retirement. The petitioner submitted copies of the beneficiary's husband's bank account for March and July 2001, but provided no other evidence to establish that the beneficiary received financial support from any other source during 2000 and 2001. The petitioner submitted no other evidence of the beneficiary's employment for the Nakwon Reformed Church in 2002, and no evidence to corroborate the beneficiary's employment from August 2000 through 2001.

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

¹ The petitioner was represented during the initial stages of these proceedings by different counsel, who is referred to as "prior counsel" in this decision.

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.

On appeal, Reverend ██████ in a letter dated April 11, 2005 again reiterated that the beneficiary worked on a full-time as an educational missionary with the ██████ Reformed Church from February through December 2001 without pay, and further stated that she had been compensated in the position since December 2001. Reverend Lim indicated that the beneficiary's duties consisted of "visitation ministry," - visiting members' homes, teaching and preaching the Bible; "counseling ministry," - counseling, developing an "effective strategy for solutions to members' problems in coordination with pastoral staff," and providing spiritual guidance and prayer; "teaching ministry,"- developing bible study course and planning congregational activities to encourage active participation in study, analyzing member participation and changes in congregational emphasis to determined needs for religious education; and "administrative ministry" - participating in denominational activities such as giving assistance to congregations within the denomination.

The petitioner resubmitted a copy of the beneficiary's year 2002 Form 1040, now signed and dated April 10, 2004. The petitioner submitted no evidence that the return was filed with the IRS, and the return, dated two years after the services were allegedly performed and compensated, does not provide contemporaneous evidence of the beneficiary's employment with the Nakwon Reformed Church in 2002. Further, the petitioner submitted no evidence such as canceled checks, pay vouchers, authenticated work schedules or other documentary evidence to corroborate the beneficiary's employment during the qualifying period. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner has not provided evidence to document the work actually performed by the beneficiary during the qualifying period, particularly as a volunteer worker. Accordingly, the evidence does not establish that the beneficiary was continuously employed as an educational missionary for two full years immediately preceding the filing of the visa petition.

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.