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FILE: EAC 03 264 53033 Office: VERMONT SERVICE CENTER Date: NOV 02 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant 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 Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

The petitioner is a constituent church of the Reformed Church in America. 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 "minister for missionary." The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation. The AAO dismissed the petitioner's appeal, finding that the petitioner had not overcome either basis for the denial.

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 we shall consider here is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection

between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

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. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The petitioner provided a list of the beneficiary's duties, reproduced in full in the AAO's prior decision. Some elements of this list include "Carries religious message and educational aid to non-Christian lands and people to obtain converts and establish native church and be designated missionary"; "Conducts religious worship and performs other spiritual functions associated with beliefs and practices of religious faith or denomination as authorized"; and "Prepares and delivers sermons and other talks and administers/assists rites and sacraments such as baptisms, conducting communion services."

The AAO's dismissal notice included the following passage:

The record does not indicate that the proffered position existed within the organization prior to 2001. Further, the evidence establishes that the beneficiary worked in a voluntary capacity with the petitioner until April of 2002. The evidence does not establish that the position offers full-time (at least 35 hours per week, as defined by the U.S. Department of Labor's Bureau of Labor Statistics) employment. The petitioner submitted no evidence that the position of minister of missionary is defined and recognized by its governing body, or that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The record does not establish that the proffered position qualifies as that of a religious worker within the meaning of the statute and regulation.

The AAO also expressed concern that the petitioner had not established the specific amount of time that the beneficiary devoted to each of his several enumerated functions.

On motion, Rev. _____ pastor of the petitioning church, states: "The functions performed by [the beneficiary] are traditional religious functions conducting services, counseling those who are troubled, teaching religion, reaching out to those in need and training and assigning those who proselytize the faith. All of the above are considered to be traditional religious functions of the clergy." The petitioner has submitted no objective evidence to show that the functions performed by the beneficiary are exclusively reserved for the clergy within the Reformed Church of America denomination. Leading a worship service is not exclusively limited to the clergy, which is why 8 C.F.R. § 204.5(m)(2) specifies that the definition of "minister" does not include lay preachers (who also conduct worship services). The petitioner cannot compel the conclusion that the beneficiary qualifies as a minister for immigration purposes simply by declaring him to be one. *See Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978).

That being said, the AAO, in its previous decision, does not appear to have given due consideration to the nature of the beneficiary's duties as described. Upon further consideration, it appears that these duties are predominantly religious in nature and can reasonably be said to fall within the scope of traditional religious functions. The AAO hereby withdraws its prior finding to the contrary, that finding having rested on a flawed and incomplete discussion of the beneficiary's specified duties.

The remaining issue concerns the beneficiary's prior experience in the position offered. The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on September 27, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a "minister for missionary" throughout the two years immediately prior to that date.

In a letter dated September 23, 2003, Rev. [REDACTED] stated:

[The beneficiary] has . . . been serving for our church as a Minister for Missionary since March 2001 until the present time, initially on a voluntary basis and later in H1B1 status as Minister for Missionary for our church. . . .

He is currently a full time student at Faith Theological Seminary. . . .

[The beneficiary] is receiving the monthly salary of \$2,000.00 per month and had received \$1,600.00 per month until June 30, 2003. . . . He works at least 40 hours per week.

Attached to this letter was a copy of the beneficiary's "Weekly Schedule," which indicated that the beneficiary had at least two hours of duties every day of the week, including ten hours of scheduled duties every Saturday:

Sat. 6:00 am – 8:00 am:	Early dawn prayer service.
9:00 am – 12:00 noon:	Prepare for Sunday's sermon.
4:00 pm – 9:00 pm:	Lead bible study and study on mission sites, their languages and cultures such as China, North Korea, Mexico, Costa Rica and Philippines, sometimes including members from Reformed Church in America.

When the petitioner submitted the above schedule in September 2003, the petitioner did not offer any indication that this schedule was inaccurate, outdated, or had been changed in any way.

The AAO, in its decision of August 18, 2005, stated:

In its letter of September 23, 2003, the petitioner stated that the beneficiary had served as its full-time minister of missionary since March 2001, first on a voluntary basis and then pursuant to an H1-B, alien in a specialty occupation or profession, nonimmigrant visa. . . .

The petitioner indicated that during this time, the beneficiary was a full-time student at Faith Theological Seminary pursuing a Master of Divinity degree, while working at least 40 hours per week for the petitioner. A letter from the academic dean of Faith Theological Seminary, dated April 16, 2003, confirmed the beneficiary's attendance at the school with an expected graduation date of May 2004. The petitioner submitted a copy of the beneficiary's "regular week work schedule," which reflects a 50-hour workweek. With the petition, the petitioner also submitted copies of canceled checks that it made payable to "Pastor [REDACTED] for \$1,600 in March and April of 2003. The petitioner submitted no other corroborative evidence of the beneficiary's work during the qualifying two-year period. . . .

On appeal, the petitioner stated that the beneficiary's work schedule with the petitioning church was organized around his class schedule at Faith Theological Seminary. The petitioner also stated that from March 2001 to March 2002, the beneficiary volunteered his services with the petitioner, and that his monthly salary, ranged from \$1,000 in April 2002 to his current salary of approximately \$1,727.

On appeal, the petitioner submitted copies of checks reflecting that it paid "Pastor [REDACTED] or the beneficiary at least \$1,000 per month from April 2002 to October 2004, but show nothing for the remainder of the qualifying period of September 2001 through March 2002. The petitioner asserts that the regulations do not require that the alien's qualifying experience must be paid employment, and that the beneficiary had the requisite experience working for the petitioning organization.

Nonetheless, 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.

The petitioner submitted no documentary evidence to corroborate the beneficiary's work with the petitioning organization from September 2001 through March 2002. *See Matter of Soffici*, 22 I&N Dec. at 165. Further, the record does not establish that the beneficiary was not dependent upon secular employment for his support during this time frame.

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.

On motion [REDACTED] states that, before the petitioner began paying the beneficiary in 2002, the beneficiary "received funds from Korea as evidenced by the annexed bank documents." Financial documents provided

by the petitioner indicate that the beneficiary received substantial sums of money from sources in Korea and Canada during late 2000 and 2001. These documents offer some indication of the beneficiary's means of support at the time, but they are silent regarding the extent to which the beneficiary worked for the petitioner during that period.

Additional credibility issues surround the beneficiary's studies at Faith Theological Seminary, which was located in Philadelphia, Pennsylvania, during the relevant period. (The seminary has since relocated to Baltimore, Maryland.) A copy of the academic transcript from the seminary shows a matriculation date of February 10, 2001. In a letter dated November 11, 2004, Academic [REDACTED] stated that the beneficiary "was a full time student at Faith Theological Seminary from February 2001 to May 2004." [REDACTED] added that the beneficiary's "class schedules were . . . [e]very Saturday from 9:00am to 6:00pm" from February to May and from September to December of each year from 2001 to 2003.

In a letter dated November 25, 2004, [REDACTED] stated:

[The beneficiary] was initially provided with a Work Schedule when he started to associate with our Church. In that Schedule he had a full day work load on Saturdays and Thursdays he was virtually free. When he enrolled at the Seminary to pursue his Masters Degree in Divinity, his schedule mandated that he should attend classes on Saturdays. . . . In order to accommodate his study schedule [the beneficiary]'s work schedule was modified and he was asked to do the work, which was originally scheduled for Saturdays on Thursdays, which he did.

This explanation, however, does not fit the information provided previously by the petitioner or by the seminary. The schedule and transcript show that the beneficiary's Saturday studies began in February 2001, a month before the beneficiary purportedly began volunteering at the petitioning church in March 2001. This contradicts the claim that the beneficiary originally worked for the petitioner on Saturdays, but changed his schedule "when he enrolled at the Seminary." Nevertheless, as late as September 2003, two and a half years after the alleged change of schedule, the petitioner provided a written schedule showing that the beneficiary worked ten hours each Saturday, with no mention of any schedule change to accommodate his studies in Philadelphia.

Yet another credibility issue has surfaced in other documents that the petitioner has provided to immigration authorities. As noted above, [REDACTED] September 23, 2003 letter acknowledged the beneficiary's H-1B nonimmigrant status. The petitioning church had filed a Form I-129 nonimmigrant petition on the beneficiary's behalf on September 5, 2002. [REDACTED] signed that petition on August 1, 2002, thereby certifying the petitioner's claims under penalty of perjury. In response to the question "Is this a full-time position?" the petitioner answered "No," and stated that the position was for only 25 hours per week. On Department of Labor Form ETA 9035, which [REDACTED] also signed with a certification that the petitioner's claims were true and accurate, the petitioner answered "Yes" to the question "Is this position part-time?" The petitioner indicated that the beneficiary would receive \$20,150 per year for this part-time work.

Because the petitioner repeatedly stated under penalty of perjury on August 1, 2002 that the beneficiary would only work part-time, 25 hours per week, we have reason to doubt the petitioner's subsequent claim that the beneficiary actually worked "at least 40 hours per week" during this same period.

Furthermore, the petitioner's August 2002 claim that the beneficiary would receive \$20,150 per year for working 25 hours per week conflicts with the petitioner's new claim that the beneficiary "received \$1,600.00 per month until June 30, 2003." \$1,600 per month equates to only \$19,200 per year. The petitioner has submitted copies of canceled checks, purporting to indicate that the petitioner paid the beneficiary \$1,000 per month from April 2002 to August 2002; \$1,500 per month from September 2002 to February 2003; and \$1,600 per month from March 2003 to June 2003. If these checks are authentic, then throughout this time period, the petitioner paid the beneficiary significantly less than the petitioner had agreed to pay him for a 25-hour work week. This disparity does not readily lead to the conclusion that the beneficiary actually worked "at least 40 hours per week" rather than the 25 hours originally claimed.

On September 5, 2006, pursuant to 8 C.F.R. § 103.2(b)(16)(i), the AAO informed the petitioner of the above discrepancies. The AAO advised the petitioner that this information, if unrebutted, would result in the denial of the petition. In response, [REDACTED] asserts that the beneficiary "was assigned with all the plans listed in the 'sample schedule' as attached in the previous package. However, due to his school schedule on Saturdays, our church . . . has excused him from Saturdays." This explanation does not account for the fact that the beneficiary began studying at the seminary in February 2001, a month before he supposedly began working for the church. That being the case, it would have been immediately obvious from the outset that a Saturday work schedule would be unworkable. There would have been no time when the beneficiary was working for the church on Saturdays but then had to change his schedule to accommodate his studies. The AAO observed as much in its letter of September 5, 2006, but the petitioner does not acknowledge this in its response, let alone offer a credible rebuttal. As we have already noted, the petitioner's initial submission contained no indication at all that the original schedule was incorrect or had been modified, nor did the petitioner originally indicate that the beneficiary studied in Philadelphia on most Saturdays.

The petitioner's response also fails to acknowledge, let alone address, the observation that the petitioner had previously described the beneficiary's position as part-time in the context of the H-1B nonimmigrant petition, or that once the beneficiary had his H-1B visa, he received considerably less than the rate of pay described in the nonimmigrant visa petition.

The remainder of the petitioner's most recent submission shows that the beneficiary was involved with the petitioning church in some capacity during the 2001-2003 qualifying period. The issue, however, is not whether the beneficiary was there at all. The issue is that the petitioner has provided inconsistent, contradictory accounts of the beneficiary's activities, which make it difficult for us to conclude, now, that the petitioner engaged the beneficiary's services full time throughout the qualifying period.

Doubt cast on any aspect of the petitioner's proof may 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, 586 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 592.

Because the petitioner has failed to provide competent objective evidence to resolve a number of serious discrepancies in the petitioner's various claims, we find that the petitioner's most recent claims regarding the beneficiary's purported work for the church are seriously lacking in credibility. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. We may reject any claim that the petitioner has not shown to be true. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner's claim that the beneficiary worked for the petitioner full-time throughout the two-year qualifying period is not corroborated by credible documentary evidence, and the claim conflicts with contemporaneous documentation including the petitioner's own prior statements to immigration authorities. We therefore find the petitioner's claims to lack credibility, and we reaffirm the prior finding that the petitioner has not satisfactorily demonstrated that the beneficiary possessed the necessary experience as of the petition's filing date.

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 previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of August 18, 2005 is affirmed. The petition is denied.