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FILE:

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Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

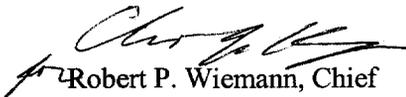
PETITION:

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 matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Roman Catholic 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 Hispanic outreach minister. The director determined that, because the beneficiary's past and intended future work is on a part-time basis, the petitioner has not established that the beneficiary is eligible for the classification sought.

On appeal, the petitioner submits copies of previously submitted documents and arguments from counsel.

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 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 March 15, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Hispanic outreach minister throughout the two years immediately prior to that date. In addition, 8 C.F.R. § 204.5(m)(4) requires the prospective employer to set forth qualifying terms of employment.

In a March 3, 2004 letter accompanying the initial submission, [REDACTED] Pastor of the petitioning church, stated that the beneficiary's "employment will be permanent and full-time. For her services in this position, [the beneficiary] will be compensated at a rate of \$15,000 per year, and provided with housing and transportation in the amount of an additional \$5,000 per year." [REDACTED] also stated that the beneficiary "has worked in the position described as an R-1 nonimmigrant from July 22, 2001 to the present."

Form W-2 Wage and Tax Statements show that the petitioner paid the beneficiary \$1,700 in 2001 and \$14,400 in 2002. Pay receipts covering the period from December 2001 to November 2003 show that the beneficiary consistently received a salary of \$1,200 per month, or \$14,400 per year, during that period. Thus, in 2002 and 2003, the beneficiary received 96% of her stated future salary, which would be consistent with her intended future work schedule being similar or identical to her past work schedule. It would not be consistent with a planned significant increase in her future work hours.

On April 6, 2005, the director requested "a breakdown of the number of hours devoted to each of the beneficiary's proposed job duties on a weekly basis." In response, the petitioner submitted a one-page schedule concluding with the summary "Weekly average - 23 hours." The listed hours actually add up to 21 hours, rather than 23.

The director denied the petition on December 23, 2005, stating:

In a memo dated February 20, 1992, from this Bureau's Office of Service Center Operations, the following guidance was provided, concerning religious-worker petitions:

The alien's qualifying experience for the previous two years and the work to be done in the United States must be full-time. In the immigrant context, full-time work is generally considered to be 35-40 hours per week or whatever is appropriate for the occupation.

. . . Documentation submitted indicates that the beneficiary's position is not a full-time position. A breakdown of the hours submitted indicates that the beneficiary works an average of 23 hour[s] per week. A full-time position is generally considered to be 35 to 40 hours per week. Therefore, you have not established that the position is, in fact, full-time.

The record does not establish that the beneficiary will be employed in a religious occupation.

On appeal, counsel states: "neither the statute at INA § 101(a)(27)(C), nor the regulations at 8 C.F.R. § 204.5(m)(2) require that a special immigrant religious worker's prospective employment in the United States be full time." Counsel also claims that the director "concedes that the beneficiary qualifies for the requested visa under the statute and regulations, but cites a February 20, 1992, memorandum from the Officer [sic] of Service Center Operations as the sole authority for the denial."

The director did not “concede[] that the beneficiary qualifies for the requested visa under the statute and regulations.” This is an unfounded extrapolation by counsel. The director’s citation of a memorandum from the Office of Service Center Operations is not a “concession” that the beneficiary qualifies under the statute and regulations.

Counsel’s core argument on appeal is that the director impermissibly cited the beneficiary’s work schedule as a basis for denial, when neither the statute nor regulations directly requires full-time work.

It is true that the statute and regulations do not mention work hours, and therefore they neither preclude *nor permit* a finding of eligibility based on part-time employment. Rather than rely on an imagined presumption of eligibility, it is necessary to turn elsewhere for guidance on this issue. 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 (Sept. 19, 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. The term “continuously” is discussed in a 1980 decision wherein the Board of Immigration Appeals (BIA) 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, 402 (BIA 1980). Subsequent legislation did not repudiate or nullify this decision. In line with 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.

Counsel acknowledges *Varughese* and other decisions, but contends that the intent of the BIA was “not that special immigrant [religious] workers work full time.” Counsel offers no alternative reading of the passages, “he has not carried on the vocation of minister . . . when only 9 hours per week are devoted to church activities” (*Id.* at 399) and “the respondent, while carrying a full-time school schedule, cannot claim 9 hours per week in church activities as continuously carrying on the vocation of minister so as to satisfy the requirements of the Act” (*Id.* at 402). As to what the BIA supposedly *did* intend, counsel simply quotes the statutory language. As we have already noted, Congress formulated the current version of the statute after *Varughese*, at which time it could have repudiated the BIA’s case law, but did not do so.

Counsel cites a congressional subcommittee hearing as evidence that “Congress has not legislated a requirement that religious workers work full time, and has not encouraged the Department of Homeland Security to implement such a regulation.” Counsel cites a passage reading, in part:

At the time of our report in March 1999, INS proposed a regulatory change to expressly require that immigrant religious worker visa applicants have full-time prior work experience and work for the religious organization on a full-time basis in the United States. . . .

As of June 2000, the proposed regulatory change has not been made. On the proposed

changes, INS indicated it will continue to support the requirement for more information from visa applicants and may include this requirement as part of the proposed regulatory change. Given that they already have the authority to request additional information from petitioning organizations, the INS says that no additional procedural changes are needed in that area.

H.R. Subcomm. on Immigration of the Jud. Comm., Religious Worker Visa Programs, 106th Cong. 14 (June 29, 2000). Although counsel attributes the quoted passages to "Congress," the quoted remarks are, in fact, the words of [REDACTED] Associate Director, International Relations and Trade Issues at the General Accounting Office, who made other comments in strong support of "expressly" (as opposed to implicitly) requiring full-time work. One member of Congress, Rep. [REDACTED] expressed misgivings about legislating an express full-time requirement (*Id.* at 56), but the transcript does not reflect that his opinions represented the sense of Congress.

The above discussion aside, we note that [REDACTED] had originally claimed that the beneficiary's "employment will be permanent and full-time." The record now shows that this assertion was not true, and counsel readily acknowledges that the position is not full-time. 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. *See also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988).

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.