

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

C1



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 20 2008**
WAC 07 119 50552

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 Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an international religious and charitable organization. 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 Ministries Director.

The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous full-time work experience in the position sought immediately preceding the filing date of the petition.

On appeal, the petitioner argues that the director disregarded its long-standing policy of paying the husband where both the husband wife are performing full-time services within its organization.

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 issue raised in the director's decision in these proceedings is whether the petitioner established that the beneficiary has been performing full-time work in the proffered position 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)(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, 2007. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Hispanic Ministries Director throughout the two years immediately preceding that date.

Along with the Form I-360, the petitioner submitted a letter indicating that the beneficiary has been an active member of its organization for over 30 years and was commissioned as an officer on January 7, 1976. The petitioner indicated that the beneficiary attended a mandatory two-year officers training program and attended many of its organization retreats. The petitioner asserted that the beneficiary is qualified and authorized to conduct religious worship and to perform ministerial duties and since 2004, has continuously served full-time in the position of Hispanic Ministries Director within the Mission and Culture Department of its organization. In its Brief of Appointment dated November 1, 2005, the petitioner described the beneficiary’s duties and responsibilities as follows:

- Serve on the Mission Alignment Council and Territorial Multicultural Ministries Committee.
- Chair the Territorial Committee for Hispanic Ministries, with responsibility for the effectiveness of that group in strategizing for mission on the field and in representing concerns of the field to administrative leadership.
- Coordinate all field research relating to Hispanic ministries, the interpretation of data for strengthening of Army mission and the implementation of approved recommendations growing out of such studies.
- Oversee the planning of an annual Hispanic Leadership Seminar and other such gatherings, as needed.
- Coordinate services of Spanish interpretation at various Army gatherings.
- Assist with consultation on personnel assignments, as requested.
- Provide counsel in the planning of various divisional and territorial events.
- Serve as a mentor and director with respect to local issues and questions arising out of mission amongst Hispanics, being available for regular visitation and speaking as requested.
- Be available upon request to partner with the Territorial Pastoral Care Department and divisional leadership in offering pastoral care to Hispanic officers.
- Reinforce teaching on Salvation Army theology and history, as needed.
- Assist with the coordination of mission teams as requested by the Mission and Culture Secretary.
- Assist, as requested, with the ongoing evaluation and strengthening of Spanish language training in the School for Officer Training environment.

- Assist with cultural sensitivity training and the cultivation of multicultural and multigenerational life together.
- Collaborate with the Youth and Candidates' Secretary on issues relating to the recruitment and development of Hispanic candidates for officership.
- Serve as chairperson of the Spanish Publications Advisory Committee.
- Give oversight to the Territorial Director for Spanish Resource Development.
- Officer consultation on corps planting in the territory as requested by the Mission and Culture Secretary and others.
- Serve as liaison between Territorial Headquarters and the Puerto Rico and Virgin Islands Division for a strengthening of understanding and relationship.
- Maintain a working knowledge of Salvation Army Orders and Regulations and official policy directives and minutes relating to the area of Salvation Army work over which she has been given responsibility.
- Inculcate "esprit de corps" and encourage all personnel to work together as a team with efficiency, unity of purpose and understanding.
- Observe strict confidentiality in all personal and private matters concerning officers and employees, except where duty requires communication with a superior officer and refrain from premature or unauthorized release of restricted information.
- Serve, to the extent permitted by the responsibilities of this appointment, as an active soldier of a corps by personal participation and financial support.
- Prepare a farewell brief upon receiving farewell orders to advise her successor concerning operational programs, projects, assignments underway or in planning, enabling her to provide continuity to the work of the office.

The petitioner, in its letter dated February 21, 2007, indicated, "[f]or the position of Hispanic Ministries Director, [the beneficiary's] total annual compensation is \$76,579, which includes salary as well as housing and transportation (paid in her husband's name as customary with The Salvation Army's standard business practice for husband and wife teams employed together in the United States)."

On May 7, 2007, the director issued a Request for Evidence (RFE), and instructed the petitioner to submit evidence of the beneficiary's work history from March 15, 2005 to March 15, 2007 and:

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 remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself or herself (and family members, if any) during the two-year period and any other activity with which the beneficiary was involved that would show financial support.

The petitioner was also instructed to submit evidence showing that it has been paying the beneficiary, or providing compensation for services.

In response, the petitioner submitted a letter indicating that the beneficiary is an ordained minister serving in its organization on a full-time basis with a work schedule of a minimum of 40 hours per week. The petitioner listed the breakdown of the duties the beneficiary performed for an average week as Minister of Religion (Hispanic Ministries Director) as follows:

- Responsible for all Salvation Army senior programs and activities of corps community centers throughout the Eastern Territory, and with relates aspects of service to the community in the name of Jesus Christ - 30% of her time.
- Serve on the Mission Alignment Council and Territorial Multicultural Ministries Committee – 20% of her time.
- Coordinate all field research relating to Hispanic ministries – 15% of her time.
- Oversee the planning of the annual Hispanic Leadership Seminar – 10% of her time.
- Coordinate services of Spanish interpretation at various Army gatherings – 10% of her time.
- Serve as liaison between Territorial Headquarters and the Puerto Rico and Virgin Islands Division for a strengthening of understanding and relationship – 15% of her time.

As evidence of remuneration, the petitioner submitted copies of the beneficiary's and her husband's income tax returns for 2005 and 2006, a Form 1099-MISC for 2005, and copies of pay stubs dated April 14, 2005 through April 26, 2007 that were issued in the husband's name. The incomes reported on the income tax returns for 2005 and 2006 were \$42,542.00 and \$51,819.00, respectively. The petitioner indicated that the salary compensation for the beneficiary and her spouse is \$76,579.00, which includes salary, housing and transportation. The petitioner asserted that it is its organization's standard business practice to issue pay checks in the husband's name for married people employed together in the United States. The petitioner also submitted a letter dated July 9, 2007, from a representative of Chesterfield Resources Benefits Administration in Akron, Ohio confirming the beneficiary's medical health coverage which commenced March 1, 2004.

The director, in denying the petition, noted that the evidence submitted by petitioner only established that the beneficiary's husband was remunerated for his services in 2005 and 2006. The letter from Chesterfield Resources Benefits Administration lacked evidentiary weight as the benefits received could have derived from the husband's employment with the petitioner organization.

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. 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 provides a letter dated December 6, 1957, from the Internal Revenue Service (IRS) that confirms the petitioning organization’s practice of paying the husband where both the husband and wife are performing full-time services for its organization. Counsel asserts that the evidence previously submitted along with the IRS’s letter is sufficient to establish that the beneficiary has been employed full-time within its organization.

Counsel’s statements and the IRS letter submitted on appeal have been considered. However, as previously mentioned by the director, the evidence submitted only establishes that the beneficiary’s husband received remuneration for his services with the petitioning organization. The petitioner has not submitted any documentation outlining the salary received by the beneficiary for the two years preceding the filing of the visa petition. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the petitioner has not clearly established that the proffered position was full-time salaried position. In its letter the IRS referenced the petitioning organization’s letter dated November 19, 1957, in which the petitioner stated, in pertinent part:

The Salvation Army is a church and its officers are duly commissioned ministers; that the wife of such an officer has the same rank and position as her husband; that although the wives of the Salvation Army officers participate in the work of the organization their services are considered, and have consistently been treated by The Salvation Army, to be *gratuitous*.

(Emphasis added).

While the determination of an individual’s status or duties within a religious organization is not under the purview of Citizenship and Immigration Services, the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests within Citizenship and Immigration Services. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The petitioner has not clearly demonstrated that the beneficiary had been continuously engaged in a full-time salaried religious vocation or occupation during the two-year period immediately preceding the filing date of the petition. For this reason, 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.