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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 16 2008
WAC 07 150 53168

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
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 (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 head of its education department. 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.

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 has established that the position qualifies as that of a religious worker.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation, which is defined at 8 C.F.R. § 204.5(m)(2) as follows:

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.

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.

With the petition, the petitioner submitted a copy of its charter, which lists its officers as the president (the church pastor), the administrator, and the treasurer. The charter also identifies "additional church ministries," to include leaders of youth, Sunday school, chorus, music, singing groups and home groups, as well as the leader of the usher team. The charter does not provide for an education department but does authorize the church to organize departments as the need arises. The petitioner provided no other information regarding the proffered position other than stating that the beneficiary had been engaged in the position since October 2005.

In a request for evidence (RFE) dated July 26, 2007, the director instructed the petitioner to provide a detailed description of the work to be done in the proffered position, including specific job duties and the number of hours to be spent in performing each duty.

In its October 4, 2007 response, the petitioner stated that the religious education department was established in June 2003, and that the department was led by a volunteer coordinator until May 2005, when the volunteer was "dismissed" "due to the lack of experience and necessary education." The petitioner stated that as head of the religious education department:

[The beneficiary] supervises all of its affiliated education subdivisions: Sunday School, School of Russian Language, Grace Music School, Spiritual Formation Ministry. He conducts weekly meetings with the Heads of the subdivisions and receives quarterly reports from them upon which he analyses [sic] the work of each subdivision. He is also responsible for preparation of the course for Home Groups Bible Studies and for preparation and organization of the course for Water Baptism participants.

The petitioner stated that the beneficiary worked approximately 36 hours per week in the position. However, it did not indicate that the position of head of the religious education department is traditionally compensated. Although the petitioner stated that the beneficiary is currently paid \$11 per hour for his services, it also stated that the beneficiary is its only employee and that the other 18 ministers and "over 50 staff members" are all volunteers. Further, the individual who held the position prior to the beneficiary was a volunteer.

In denying the petition, the director noted that the petitioner stated that from October 2005 to August 2006, the beneficiary "worked partially on a volunteer basis due to his probation period," and that the petitioner compensated him with "occasional housing allowances, donations, and other material help." The director concluded that the evidence revealed that the beneficiary was a volunteer and was not employed by the petitioner, as the petitioner could not exercise the same level of control or responsibility over the beneficiary as it could over an individual who was in its employ. The director also determined that the duties of the position involved supervision, organization, meetings and preparation of lessons, and therefore was primarily administrative in nature.

On appeal, counsel states that the evidence shows that the beneficiary is directly involved in religious education, and that the director's "argument" that because the position was previously held by a volunteer is evidence that the position is not traditionally a permanent, full-time salaried position "is not persuasive."

The director's determination that the duties of the position are not of a religious nature because they are primarily administrative in nature cannot stand. The duties of the position, as outlined in the job description, include supervising the work of all educational subdivisions of the church, developing the curriculum for those departments, and providing religious education and instruction to staff members. Supervision of religious education programs, even without direct instruction, does not mean that the position is only administrative and involves no religious work. The level and type of supervision must be considered. In the instant case, the position involves direct supervision and planning of programs and development of religious curriculum. In addition, the position requires the beneficiary to provide religious instruction to staff members. We therefore withdraw the director's statements that the duties of the position are primarily administrative in nature.

Nonetheless, the petitioner has not established that the position is a traditional, full-time salaried position. The petitioner stated that all of the positions in the organization, with the exception of the position currently occupied by the beneficiary, are volunteer positions. The person holding the position prior to the beneficiary was also a volunteer. As discussed further below, the petitioner did not pay the beneficiary for the first year that he was in the position, although it stated that it provided the beneficiary with "occasional" support in the form of allowances, donations and other "material help."

On appeal, counsel asserts that the petitioner decided to create a full-time, salaried position of head of the religious education department in 2005, when the services of the volunteer coordinator became insufficient. Counsel references the excerpt from the minutes from the petitioner's board of directors. However, counsel's interpretation of the evidence is erroneous. The minutes of the board do not indicate why the volunteer was released or why the beneficiary was selected as head of the education department. In its October 4, 2007 letter, the petitioner stated that the individual who previously held the position was "dismissed" because of lack of experience and education. Further, according to the petitioner, the position was established in 2003, not 2005, and no evidence of record indicates that the position was established with a specified salary.

Accordingly, the record does not reflect that the position of head of the religious education department in the petitioning organization is traditionally a salaried position. The record does not reflect that the petitioner has any salaried positions. While the petitioner indicates that it presently compensates the beneficiary, the record does not establish that the position was compensated as a full-time position during the beneficiary's earlier incumbency. The evidence suggests that any compensation provided to the beneficiary is directed specifically to the beneficiary and not to the position.

Therefore, as the petitioner has not shown the position is a full-time compensated position within its organization, the evidence is insufficient to establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

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.

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.” 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 May 7, 2007.¹ Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The director determined that as the petitioner has not established that the proffered job is a religious occupation, the petitioner has not established that the beneficiary was continuously engaged in qualifying religious work throughout the two-year period immediately preceding the filing of the petition. We concur with the director’s decision. Furthermore, the petitioner has not established that the beneficiary was continuously employed as a religious education director throughout the qualifying period.

In its May 2, 2007 letter accompanying the petition, the petitioner stated that the beneficiary had worked as the head of its education department since October 2005. The petitioner submitted copies of a job description addressed to the beneficiary, indicating that his job as head of an education department was to commence on October 1, 2005 for the year 2005, that he would receive a housing allowance of \$590 and that the petitioner would occasionally provide him with bonuses and donations for his services. The petitioner did not indicate the frequency of the housing allowance. A second job description indicated that the work would commence on September 1, 2006 for the year 2006, and that the beneficiary would receive a salary of \$300 and an hourly wage of \$20, in addition to occasional performance bonuses and donations. The petitioner also submitted a copy of an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, that it issued to the beneficiary in 2006, showing wages reported of \$3,900, and a copy of the beneficiary’s 2006 IRS Form 1040EZ, Income Tax Return for Single and Joint Filers with No Dependents, also reporting wages received of \$3,900. The beneficiary indicated on his IRS Form 1040EZ that he was a music instructor.

The petitioner submitted a July 18, 2005 statement from the Theological Institute of Christians of Evangelical Faith in the Republic of Belarus, confirming that the beneficiary had worked at the institute from September 1, 2000 until the date of the letter, as a professor of theology and as a music pastor. The petitioner submitted no documentary evidence to corroborate the beneficiary’s employment at the institute. Going on record without supporting documentary evidence is not sufficient for purposes of

¹ In her decision, the director stated that the petition was filed on May 8, 2007. However, the receipt date stamped on the Form I-360 is May 7, 2007.

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 her RFE, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning May 8, 2005 – May 8, 2007 only. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or hat other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted a statement in which it confirmed that it provided the beneficiary compensation in the form of "occasional housing allowances, donations, and other material help" from October 2005 through August 2006. In an October 8, 2007 letter, the petitioner stated that during that time, the members of the petitioning organization provided the beneficiary with "material help" valued at \$2,500 and consisting of furniture, a washer and dryer, kitchen gadgets and clothing. The petitioner submitted no documentary evidence to corroborate any of these payments or other assistance provided to the beneficiary. *Id.* The petitioner provided a copy of IRS Form 941 for 2006, Employer's Quarterly Federal Tax Return, and Oregon State Form OQ, Oregon Quarterly Tax Report, both showing the petitioner reported wages paid to one employee in the amount of \$3,900 for the last quarter of 2006. The petitioner submitted copies of IRS Form 941 for 2007 and/or Oregon State Form OQ, showing that it paid one employee \$2,975 for the first quarter of 2007 and \$5,352 during the second quarter. The petitioner also submitted copies of pay stubs showing that it paid the beneficiary \$20 per hour from September 12, 2006 through March 20, 2007, and \$11 per hour from April through June 30, 2007, and a rate of \$25 per hour for 12 "additional" hours in May and June.

The petitioner also submitted a September 17, 2007 letter from the director of the Theological Institute in Belarus, in which he stated that the beneficiary worked 40 hours per week as a teacher of theology from September 1, 2000 through August 1, 2005. The director stated that the beneficiary received a monthly salary of \$401 beginning in January 2005, with a \$5 insurance payment. The petitioner submitted no documentary evidence, such as pay stubs, pay vouchers or canceled checks to confirm this income for the beneficiary.

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).

Section 101(a)(27)(C)(iii) of the Act provides 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.

The petitioner has not submitted evidence to verify that the beneficiary was compensated for any of his services prior to September 12, 2006. The petitioner stated that the beneficiary was provided with “occasional” assistance during his probationary period from October 1, 2005 through August 2006. The petitioner provided no documentary evidence to corroborate these occasional payments nor did it provide any information as to how the beneficiary otherwise supported himself during that period. On his 2006 IRS Form 1040EZ, the beneficiary indicated that his occupation was that of a music instructor during the year.

The evidence therefore does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition. Not only was the beneficiary not engaged in qualifying religious work, the petitioner submitted insufficient evidence to establish that the beneficiary was compensated for his services.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.