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U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 06 082 51465 Office: VERMONT SERVICE CENTER

Date **SEP 23 2008**

IN RE: Petitioner:  
Beneficiary:



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.

*Mauro Deadrick*  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an “independent non-profit missionary 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 an ordained minister/missionary. The director determined that the petitioner had not established that the position qualifies as that of a religious worker, 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, that it has extended a qualifying job offer to the beneficiary, and that it has the ability to pay the proffered wage.

On appeal, counsel disputes the director’s findings, and states that the beneficiary’s “extensive background and membership in our religious organization for more than the past two years make her imminently qualified for the [proffered] position.” Counsel submits a brief and copies of previously submitted documentation in support of the appeal.

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.

In an undated letter accompanying the petition, [REDACTED] /President of the petitioning church, stated that the proffered position was that of ordained minister/missionary, and that in the position:

- [The beneficiary] will continue to be responsible for leading some of our training situations, i.e., teaching ASL (American Sign Language) to the Titusville and Oil City, Franklin and Meadville area. We have not been able to do this ministry without her. Her skills for being a gifted ASL teacher are well known.
- She will continue to be responsible for ongoing development of a training program, which focuses on teaching Deaf and hearing how to minister to the culturally Deaf people.
- She will continue [her] function as a missionary to the Deaf in America and other nations, traveling with and helping to lead teams to countries such as Latvia, England and Denmark.
- She will be our main speaker for a video tape/CD ministry we have just recently established. Her preaching CDs have been sent out to other cities and countries.
- [She] will be the Assistant to the Director of our missions organization . . . under which the Deaf Church functions. She is also our chief consultant on Deaf issues and culture.

[REDACTED] further stated:

[The beneficiary] serves [the petitioner] as a full time missionary, in [a] variety of capacities such as secretary, consultant on Deaf issues, teacher and ASL instructor for the ministry. She is also the Associate Pastor of *New Life Deaf Church* in Titusville, where she leads worship and preaches on a regular basis and co-leads Wednesday night Bible Studies.

[She] also heads up our ministry called “In His Hands” which produces a quarterly magazine for the Deaf and Hard of Hearing. [She] is also the main pastor and [sic] our part-time Pittsburgh New Life Deaf Church, which is now one year old. She organizes events for the Deaf, speaks at our seminars and training events. She is involved in counseling Deaf in the congregations and ministers the sacraments of communion and baptism and all other church functions. She has performed funerals and is capable of officiating at weddings.

She provides secretarial duties in various office functions, teaches ASL (American Sign Language) and Deaf Culture to the community, special organizations such as Boy Scouts, colleges (as a speaker on occasion) and to civic organizations when asked. She is indispensable in her knowledge of Deaf Culture and Deaf needs and provides important insight to the ministry in these areas. She also teaches in our training schools on various subjects relating to Christian character, Biblical understanding, and Deaf matters. [Emphasis in the original.]

Reverend Southwick stated that compensation for the position is \$1,457, including in-kind compensation. However, the petitioner also stated that the beneficiary's "salary is dependent on support from individuals, churches, etc. (this amount may vary from time to time)."

In a request for evidence (RFE) dated April 4, 2006, the director instructed the petitioner to:

Please submit a statement from the beneficiary's proposed employer, which establishes that the beneficiary will be employed full-time in a religious vocation, professional religious work, or other religious work. This should include all of the following information: official position title, detailed listing and description of the beneficiary's duties . . . and the hours weekly to be spent by the beneficiary performing those duties, as well as the specific wage and other benefits offered.

In response, the petitioner resubmitted its original letter but submitted no additional documentation relating to the beneficiary's position as requested in the director's RFE. The director determined, in part, that the beneficiary had not been employed in a religious occupation and denied the petition on May 14, 2007.

On appeal, the petitioner submits a list of its work, including three day camps in 2005 and 2006, and planned activities for 2007. Other than the day camps, the petitioner did not specify which of this work was actually performed by the beneficiary and which duties relate to the proffered position. Additionally, in an undated statement on appeal the petitioner states, "All [of the petitioner's] staff who are not volunteers are expected to raise their own support and are considered self-employed. This is a traditional means for any who are missionaries in the mission field and with Mission organizations, such as we are." Accordingly, the petitioner has not established that the proffered position is traditionally a salaried position within its denomination.

The petitioner states that the beneficiary will serve as both an ordained minister and a missionary, and that the duties of the position, as performed by the beneficiary in the past, included duties as a minister, counselor, and teacher in training seminars. The position also involves duties such as teaching ASL in the community and secretarial duties. Whereas these purely secular responsibilities do not necessarily detract from the religious nature of the position, the job of ordained minister/missionary, according to the petitioner, is not salaried, the individual is responsible for securing his or her own financial support, and is considered self-employed.

Therefore, the petitioner has not established that the 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 January 25, 2006. Therefore, the petitioner must establish that the beneficiary was continuously working in qualifying religious work throughout the two-year period immediately preceding that date.

In his undated letter accompanying the petition, [REDACTED] stated that the beneficiary joined the church’s staff in 1999, where she performed the duties previously enumerated. The petitioner submitted no documentary evidence to corroborate the beneficiary’s employment during the qualifying period.

In response to the director’s RFE, [REDACTED] confirmed in a May 24, 2006 statement that the beneficiary had been with the petitioning organization “since its inception in July 1999.” The petitioner submitted several documents that refer to the beneficiary as a pastor with the petitioning organization. These included newspaper articles dated in 2004 and 2005, and copies of its magazine, *In His Hands*, for 2005 and 2006 which show the beneficiary as the editor. The 2006 magazine indicates that the beneficiary was in South Africa. The petitioner submitted no other documentation, such as canceled pay checks, pay stubs or similar documentary evidence to establish that the beneficiary worked full time or the amount of her compensation.

On appeal, in an undated statement, the petitioner states:

All [of the petitioner’s] staff who are not volunteers are expected to raise their own support and are considered self-employed. This is a traditional means for any who are missionaries in the mission field and with Mission organizations, such as we are.

1994-2003 [the petitioner’s] support came through South Africa and occasional gifts from friends who were wanting to bless her.

2003 on we were in the process of raising support for [the beneficiary] in addition to the support she gets from her home church, in South Africa. They have asked that she obtain her Green card as quickly as possible. Their intent is that she be fully supported here in the USA.

The petitioner indicated that “one lady is paying [the beneficiary’s] hospital and doctor bills,” and that this is not included in reported income for the beneficiary. However, it provided no evidence of these payments. The petitioner submitted statements indicating that it dispensed \$6,248.61 on behalf of the beneficiary in 2004 and \$10,317.91 in 2005. The petitioner provided copies of checks made payable to the beneficiary during the year 2004 totaling \$470, and partial copies of what it identifies as its check book register and the corresponding entries on its bank statements, totaling \$501.98 for the year 2004. The petitioner also stated that it paid the beneficiary’s rent, electricity, garbage, propane and car expenses, totaling \$5,276.63 in 2004. For 2005, the petitioner indicated that it gave cash to the beneficiary in the amount of \$1,380, which it reported on an Internal Revenue Service (IRS) Form 1099-MISC, Miscellaneous Income, and the beneficiary reported on her Pennsylvania tax return. The petitioner stated that it paid cash expenses on behalf of the beneficiary in the amount of \$4,264.81, and rent, electricity, garbage and propane expenses of \$4,673.10. The petitioner submitted a copy of the beneficiary’s State of Pennsylvania income tax return for the year 2005 and copies of documents labeled “1099 Report” for the beneficiary showing totals of \$1,314.28 for 2004 and \$5,544.80 for 2005. The petitioner does not show any values for August and September 2004 or January 2005 nor does it provide copies of the IRS Forms 1099 issued to the beneficiary.

The petitioner submits several documents labeled “job inquiry,” which, with corresponding debits on its monthly bank statements, purports to be evidence of the amounts that it expended on behalf of the beneficiary. However, the petitioner does not explain the nature of these entries, the source, or how they relate to the beneficiary’s support. The petitioner submitted partial copies of its electric bills for May through September 2004 and June through November 2005; copies of bills from County Environmental or Allied Waste, apparently for garbage removal, for January 2004 and January through December 2005; a partial copy of its 2004 car insurance policy; copies of a June 21, 2004 and a June 30, 2004 auto repair receipts; a confirmation of payment for registration renewal for two vehicles; and a copy of a December 23, 2003 receipt from Southall Gas. The electricity and garbage bills contain handwritten annotations showing first names and initials with amounts next to them. The initials “CJ” or “CJH” apparently refer to the beneficiary; however, the petitioner provided no evidence of whether this was the beneficiary’s share of the utility bills that were eventually paid, or any evidence that the beneficiary lived at the servicing address, which we note is the physical address of the petitioning organization. The petitioner also did not indicate to whom the beneficiary’s rent was paid or provide corroborating evidence, such as receipts or canceled checks, of the rent that it stated it paid on behalf of the beneficiary. The documentation regarding the car insurance, car expenses, and the propane gas contain no indication that they are associated with the beneficiary. We note also that the receipts for car repair are for two different vehicles.

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).

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.

According to the petitioner, it disbursed monies to and on behalf of the beneficiary, including her rent, utilities and car expenses. In its statement, the petitioner indicates that it paid the electricity bills for the beneficiary for only a fraction of the year in 2004 and 2005. The utility bills also seem to indicate that the companies billed the petitioner and it in turn allocated payments to various individuals, including the beneficiary. However, the petitioner provided no documentation as to how this allocation was made. The petitioner provided copies of checks that it made payable to the beneficiary. However, the petitioner did not indicate the purpose of the checks, which were in various amounts from \$10 to \$166.98.

The record does not clearly establish how the beneficiary supported herself during the qualifying two-year period. Thus, the evidence 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. The petitioner has provided insufficient documentary evidence to corroborate payments made to the beneficiary for her work for the petitioner, and failed to establish that she worked full time in a salaried position.

The third issue on appeal is whether the petitioner established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In its letter accompanying the petition, the petitioner stated that the proffered position was that of ordained minister/missionary. The petitioner also stated that the beneficiary worked as a “full time missionary” in a variety of positions, including secretary, consultant on deaf issues, teacher and ASL instructor for the

ministry, as well as associated pastor. The petitioner stated that compensation for the position is \$1,457, including a salary of \$500 and additional in-kind compensation based on "approximate values." The petitioner also stated that the beneficiary's "salary is dependent on support from individuals, churches, etc. (this amount may vary from time to time)." Therefore, the petitioner has not set a specific compensation level for the position. Additionally, on appeal, the petitioner stated that the beneficiary is considered self-employed and is expected to raise money for her support.

The petitioner has failed to demonstrate that the beneficiary will be solely carrying on the vocation of a minister and that she will not be solely dependent on supplemental employment or the solicitation of funds for her support. According to the petitioner, the beneficiary is expected to raise funds for her own financial support. This implies that she must either work outside of the church or solicit funds, as she is not paid a salary by the petitioner. Further, while a minister may report his or her salary as self-employment income pursuant to IRS regulations, the statute requires that an alien must be seeking entry into the United States to work for a bona fide religious organization. That requirement is not met when the individual is self-employed as the individual then works for him/herself. Therefore, self-employment is not qualifying employment for purpose of this visa preference classification.

The final issue presented on appeal is whether the petitioner has established that it has the ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

As discussed above, the petitioner indicated that the beneficiary is considered to be self-employed. However, it also states that it will provide her with monthly compensation totaling \$1,457, depending on the support she receives from others. The petitioner provided no evidence that the beneficiary had received this level of compensation in the past. As evidence of its ability to pay this wage, the petitioner submits copies of its unaudited financial statements for the year 2005.

The petitioner submitted none of the evidence required by the regulation cited above. Accordingly, it has failed to submit evidence that it has the ability to pay the beneficiary the proffered wage.

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.