



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



C1

DATE: JUN 13 2012

OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

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:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition as well as his reasons for doing so and then subsequently exercised his discretion to revoke approval of the petition on January 30, 2004. On January 26, 2009, the Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The Director, California Service Center, again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's revocation.

As stated, the instant petition was previously approved on August 13, 2003 and then subsequently revoked. The AAO's remand for application of the new regulation was in error. Accordingly, for purposes of this certification, the AAO withdraws its previous finding and focuses its review on the director's original decision, which was correctly based upon the regulations in effect at the time the petition was originally approved. Nonetheless, as the AAO conducts appellate review on a *de novo* basis, all of the evidence of record will be considered. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petitioner is a church. It seeks classification of 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 youth director. The director determined that the petitioner had failed to establish that the beneficiary had worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition and that the beneficiary's position qualifies as a religious occupation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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 September 30, 2012, 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 September 30, 2012, 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 issues presented are whether the petitioner has established that the beneficiary had worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition and whether the beneficiary's position qualifies as a religious occupation.

The regulation in effect at the time the petition was filed at 8 C.F.R. § 204.5(m)(1) provided, 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) stated, 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 November 25, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a youth director throughout the two-year period immediately preceding that date.

On the Form I-360 petition, under "Current Nonimmigrant Status," the petitioner stated that the beneficiary entered the United States on July 5, 1988 as a B-2 nonimmigrant visitor. Thus, the beneficiary was in the United States for the two-year period preceding the filing of the petition.

Reverend Bishop [REDACTED] of the petitioner's church indicated in a signed letter dated August 27, 2003 that the church would be paying the beneficiary \$700.00 a month (\$8,400.00 a year). The petitioner submitted the beneficiary's uncertified Internal Revenue Service (IRS) Forms W-2 Wage and Tax Statements for 2000 and 2001, indicating that the petitioner actually paid him \$7,200.00 for each of those years.

The petitioner has indicated that the beneficiary is willing to accept a lower wage because of his devotion to the church. The petitioner has submitted a schedule for the beneficiary, indicating that he works 48 hours each week for the church.

The petitioner has also submitted IRS Forms W-2 for work performed by the beneficiary for other employers such as Alta Bates Summit Medical Center and the San Francisco Warriors in 2001 and 2002.

In its October 30, 2009 response regarding the director's September 30, 2009 decision, the petitioner asserts that the beneficiary did not perform any volunteer work for its church. Rather, the petitioner claims that the beneficiary worked 48 hours a week for its church, but then also engaged in authorized outside employment to support himself financially. The petitioner states that it compensated the beneficiary at a low rate during the two-year qualifying period, but it still did compensate him for his employment.

Similar to the director's finding, the AAO concludes that, given the beneficiary's outside employment and compensation received, the evidence does not support a finding that the beneficiary worked full-time for the petitioner. The regulation at 8 C.F.R. § 204.5(m)(4) requires documentation that clearly indicates that the beneficiary would not be solely dependent on supplemental employment or solicitation of funds for support.

The director additionally found that the beneficiary's prior and prospective salary from the petitioner is so low that it cannot possibly reflect full-time employment. The director also noted that the beneficiary's compensation is well below the federal minimum wage. Based upon the considerably low salary offered to the beneficiary and paid by the petitioner and the beneficiary's dependence on outside employment, the petitioner has failed to establish a bona fide job offer.

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).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

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 record reflects a proffered wage of \$8,400.00 per year or \$700.00 per month during the requisite period, although the beneficiary actually received only \$600.00 per month. The proffered wage is well below the Federal Poverty Guidelines for those years.¹ As noted by the director and as evidenced by the record, during the requisite period, the beneficiary was employed by and received a significant portion of his income from employers other than the petitioner. The petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition.

The director additionally found that the petitioner had failed to establish that the beneficiary's position as a youth director qualifies as a religious occupation. 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.

The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. USCIS 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.

The director noted that many of the beneficiary's duties were secular and administrative in nature, such as attending youth group meetings, preparing weekly Bible study lessons, and encouraging and training youth for leadership. The director concluded that the duties of the proffered position do not have religious significance or embody the tenets of the petitioner's particular Baptist religious denomination. The petitioner has also submitted schedules for the beneficiary, which the AAO finds reflect his attendance at various administrative meetings and engagement in various administrative activities.

In its August 28, 2009 response to the director's July 30, 2009 Notice of Intent to Deny (NOID), the petitioner had submitted a document delineating the functions and responsibilities of its youth

¹ See <http://aspe.hhs.gov/poverty/01poverty.htm>, accessed on May 15, 2012 and incorporated into the record of proceeding.

director. The principal function of the youth director is to assist the church in coordinating the youth programs and projects. The AAO notes that the responsibilities for the position include preparing the youth for activities such as musical concerts and sports, encouraging youth participation in community service, and training the youth for leadership.

In its October 30, 2009 response regarding the director's September 30, 2009 decision, the petitioner states that the beneficiary's weekly schedule reflects that he is actively engaged in religious activities such as teaching religious studies, leading youth group meetings, performing pastoral work in the absence of the senior minister, providing counseling, and leading prayer meetings. The petitioner asserts that, in so doing, the beneficiary carries out the religious creed and beliefs of the church. The petitioner further asserts that the meetings that the beneficiary leads are neither administrative nor secular in nature. The AAO does not find the petitioner's assertions regarding the religious nature of the beneficiary's position to be persuasive.

The AAO finds that the limited time spent by the beneficiary on duties that are predominately religious in nature is not sufficient to establish that the duties relate to a traditional religious function.¹¹¹ Although the beneficiary's duties do involve some clearly religious activities, such activities are not a substantial portion of his time. If a significant portion of the position's activities do not have religious significance, the position cannot be considered a religious occupation. The evidence submitted by the petitioner is therefore insufficient to establish that the proffered position qualifies as that of a religious worker as defined by 8 C.F.R. § 204.5(m)(2).

The petition will be denied for the above stated reasons. 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 director's decision is affirmed. The petition is revoked. The appeal is dismissed.

¹¹¹ This interpretation is generally consistent with the current regulations governing immigrant religious workers, which require that the position be recognized within the denomination and that the duties must primarily relate to a traditional religious function and must clearly involve inculcating or carrying out the religious creed and beliefs of the denomination. *See* 8 C.F.R. § 204.5(m)(5).