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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 01 093 54001 Office: CALIFORNIA SERVICE CENTER Date: FEB 27 2003

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 missionary. The director determined that the petitioner had not established 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 statement.

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, 2003, 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, 2003, 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 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).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

> 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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. All three types of 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) states, in pertinent part, that each petition for a religious worker must be accompanied by a letter from an authorized official of the religious organization in the United States that 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.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue to be discussed in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petition was filed on January 22, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a missionary from January 22, 1999 until January 22, 2001. The record indicates that the petitioner last entered the United States as a B-2 visitor on April 1, 1999. His status was changed to that of an R-1, religious worker, on December 6, 2000, with validity granted from November 22, 2000 through August 14, 2003. Part 4 of the Form I-360 submitted by the petitioner indicates that the beneficiary has never worked in the United States without permission.

In a letter dated May 25, 2001, counsel stated that the

beneficiary had worked for the petitioner from April 1999 to November 2000 as a volunteer, and began work as a salaried employee only after receiving his approval of the change of status application to that of an R-1 non-immigrant religious worker. Counsel also stated that during the time that the beneficiary worked as a volunteer, he supported himself "with money he had brought to the United States." No evidence of this assertion is included in the record. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In a letter dated January 14, 2001, the petitioner stated that the beneficiary was employed as a missionary by the [redacted] from July 1996 until February 1999.

Also included in the record is a letter dated March 7, 2000, from the [redacted] Christian Union Church, [redacted] stating that that beneficiary had worked for [redacted] from July 1996 until February 1999 as a missionary.

A statement dated March 7, 2000, indicated that the beneficiary had worked for the Association of the [redacted] from July 1996 to February 1999 as a missionary performing evangelical work and the following duties:

> Spiritually led Sunday school teachers, explored churches for the natives and managed church members as an evangelist. Was in charge of drawing up school programs and evangelical work in [redacted] Technical School, our main mission, which covers elementary through high school [redacted]

No additional evidence of these assertions is included in the record. 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).

The petitioner indicated the duties of the beneficiary as follows:

> [redacted] will assist our church pastor in conducting worship services, providing spiritual guidance to church members, and plan and arrange social, and recreational programs for the congregation. [redacted] will visit church members in hospitals and convalescent facilities or at their home to offer spiritual guidance and assistance. [redacted] will preach the gospel to our congregation.

On appeal, counsel argues that previous past work experience need not be full-time or salaried. Counsel also refers to several unpublished decisions. Counsel has furnished insufficient information to establish that the facts of the instant petition are in any way analogous to those in the cases cited. Furthermore, while 8 C.F.R. § 103.3(c) provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding.

The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations at 8 C.F.R. § 204.5(m)(4) recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, the Service must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. Nor is there any means for the Service to verify a claim of past "volunteer work" similar to verifying a

claim of past employment. For all these reasons, the Service holds that lay persons who perform volunteer activities are not engaged in a religious occupation and that their voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

Although the record does list some duties of the beneficiary, it does not provide a comprehensive description of the beneficiary's activities during the two-year period immediately preceding the filing date of the petition. The unsupported assertions contained in the record do not adequately establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. The record contains insufficient evidence that the beneficiary was paid wages by the petitioning organization during the entire two years immediately preceding the filing date of the petition. The beneficiary's entry into the United States, and his stay as a nonimmigrant visitor for pleasure during that time, further precludes a finding that he was continuously working in a qualifying religious vocation or occupation throughout the requisite period. Therefore, the petition must be denied.

Beyond the decision of the director, another issue in this proceeding is whether the petitioner has made a qualifying job offer. 8 C.F.R. § 204.5(m)(4) requires that each petition for a religious worker must be accompanied by a qualifying job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state the terms of payment for services or other remuneration. In addition, 8 C.F.R. § 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner stated that the beneficiary will be paid $1,500.00 per month, and included copies of checks indicating payments made to the beneficiary by the petitioner from January to April, 2001, in the amount of $1,500.00 each. The petitioner also has submitted a few monthly bank account statements from 1999.

The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. The documents submitted do not satisfy the regulatory requirements. The petitioner has not adequately established that the needs of the petitioning entity will provide permanent, full-time religious work for the beneficiary in the future. The petitioner has not demonstrated that it has extended a valid job offer to the beneficiary, or established its ability to pay the beneficiary the proffered wage. For this additional reason, the petition may not

be approved.

Two other issues not addressed by the director is that 8 C.F.R. § 204.5(m)(3)(ii)(D) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. In addition, to establish that the job offered is a religious occupation, a petitioner for a special immigrant religious worker must show the religious nature of the work, the religious training required to do the job, and how the alien has met the training requirements. To establish that the job offered is a religious vocation, a petitioner must show that the job requires the taking of vows or a permanent commitment to a religious life, and that the alien has taken the requisite vows or made the requisite commitment. The Service 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; specific, prescribed religious training or theological education is required; the position is defined and recognized by the governing body of the denomination; and, the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner states that the beneficiary is qualified to perform the duties of the position, yet lists no qualifications necessary to prepare an individual for these duties. The petitioner has submitted insufficient evidence to establish that the position qualifies as that of a religious worker. The record also fails to reflect that the beneficiary's activities for the petitioning organization require any religious training or qualifications. In addition, no evidence is included in the record to indicate the beneficiary's qualifications for the position of religious worker.

The petitioner has not demonstrated that the position of "missionary" is a qualifying religious vocation or occupation, since those duties identified indicate that this position consists of activities normally expected of an active member of a religious congregation rather than a position that would be filled by a salaried employee who completed training in preparation for a career in religious work. Further, the record fails to reflect that any training obtained by the beneficiary qualifies him to perform the duties of a "missionary." The beneficiary has not been shown to be qualified to engage in a religious vocation or occupation. For these additional reasons, the petition may not be approved.

Another issue not raised by the director in her decision is that the regulations at 8 C.F.R. § 204.5(m)(1) and 8 C.F.R. § 204.5(m)(3)(ii) are clear in stating that the religious worker must have been a member of the same religious denomination as the petitioning organization for the two years immediately preceding the filing of the petition.

In a letter dated August 4, 1999, [redacted] for the [redacted] is identified as a "religious cult" with no other determination of denomination provided either of the beneficiary, his previous employer, or of the petitioner.

The record fails to clearly identify the beneficiary's or the petitioner's denomination. In addition, the denomination of the beneficiary's previous employers, the [redacted] Christian Union Church, the [redacted] the [redacted] Christian, and the Assembly [redacted] are not further identified. No further evidence of the affiliation of the churches is included in the record.

The petitioner has not established that the beneficiary was a member of the religious denomination of the petitioning organization during the two-year period preceding the filing date of the petition, and for this additional reason, the petition must be denied.

Discrepancies encountered in the evidence presented are called into question in the petitioner's ability to document the requirements under the statute and regulations. These discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

In reviewing an immigrant visa petition, the Service must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.