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**U.S. Department of Homeland Security**

Bureau of Citizenship and Immigration Services

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invasion of persons

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

[REDACTED]

AUG 15 2003

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

[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 Bureau of Citizenship and Immigration Services (Bureau) 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.

*[Signature]*

Robert P. Wiemann, Director  
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 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, 8 U.S.C. § 1153(b)(4), to perform services as a minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

On appeal, the petitioner submits copies of time sheets from 2000 through 2002.

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).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an 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.”

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 April 29, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

\_\_\_\_\_ administrative secretary at the petitioner’s national office, states:

The last two years prior to December 2001, [the beneficiary] volunteered to work as a minister attached to Atlanta District without pay, because he does not have authorization to work. . . .

[B]ecause [the beneficiary] is not authorized to work we have compensated him with free room and boarding allowances. He receives cash (love offering) at times when he is preaching at other churches. This is common among all religions. He has been ministering in nine (9) assemblies with a total membership of 661 adults excluding children.

The director denied the petition, stating that the record does not establish the necessary two years of qualifying experience prior to the petition’s April 29, 2001 filing date. The director noted that undocumented volunteer work does not qualify.

On appeal, counsel asserts “the Petitioner has submitted evidence that the Beneficiary was solely engaged in a religious occupation at the church. Therefore, the evidence that was submitted should be sufficient to establish that the Beneficiary has the two years experience doing related work.” Counsel asserts that further evidence will be forthcoming from the petitioner’s “archives and records.” Subsequently, the petitioner submits copies of time sheets dated from January 2000 through August 2002. Counsel states that these records establish that “the beneficiary has worked for the petitioner for well over the required two (2) year period.” The sheets identify the beneficiary as an elder in the church’s Carolina District. Even if these time sheets are entirely accurate and authentic, they do not overcome the director’s finding that the beneficiary was unpaid, and that the petitioner has not established two years of qualifying employment.

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. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 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 salaried. To hold otherwise would be contrary to the intent of Congress.

Furthermore, the petitioner cannot meet the two-year requirement simply by arbitrarily identifying a two-year period during which the beneficiary worked for the petitioner. The statute and regulations cited above require evidence of continuous employment during the two-year period immediately preceding the filing of the petition. Because the petition was filed on April 29, 2001, the petitioner must establish the beneficiary’s continuous employment from late April 1999 onward. The petitioner’s assertion that the beneficiary has worked for the petitioner during the “two years prior to December 2001” only extends back to December 1999. The time sheets submitted on appeal cover a comparable period, beginning in January 2000. Thus, these claims and documents cannot suffice.

According to the I-360 petition form, the beneficiary did not arrive in the United States until November 1999. The petitioner cannot under any circumstances establish the beneficiary's eligibility without accounting for the beneficiary's activities from April 1999 onward. The record as it stands does not even show where the beneficiary was prior to his November 1999 entry, let alone that he was employed continuously and full-time in a religious occupation.

The only evidence that the petitioner has submitted that pertains to the beneficiary in the period before November 1999 consists of certificates issued to the beneficiary in 1997 and 1998 by the United Christian Church & Ministerial Association. While that body is based in the United States, the certificates do not establish the beneficiary's employment or training, or even demonstrate that the beneficiary was in the United States at the time they were issued.<sup>1</sup> One certificate is labeled "honorary Certificate and Degree of Divinity and Ministry," but the certificate does not indicate that any formal divinity studies, or experience as a religious worker, were required to earn this "honorary . . . Degree."

Another issue bears mention. 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.

The regulations permit the submission of other financial documentation in addition to, but not in lieu of, the specific types of evidence listed above. The record as it now stands does not contain copies of annual reports, federal tax returns, or audited financial statements. The petitioner has submitted copies of bank statements (which do not provide a complete picture of the petitioner's finances) and an "Accountants' Compilation Report," the introductory letter of which specifies "[w]e have not audited or reviewed the accompanying financial statements."

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.

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<sup>1</sup> An application for ordination and a minister's license from the United Christian Church and Ministerial Association is available via the Internet at <http://www.catndogsitter.com/ucma/license.htm>. The application consists of a 10-question survey, and requires the signatures of two ministers. The only question that pertains to formal training is question 6, "[a]re you enrolled in our Bible Study Course?"