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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: [redacted] Office: Texas Service Center Date: AUG 19 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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner 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), in order to employ her as a minister for women at a monthly salary of $750.00.

The acting director denied the petition, finding that the petitioner had failed to establish that the beneficiary had the required two years of continuous experience in a religious occupation, and that it had the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner states that the case needs to be reconsidered in the context of the special needs and circumstances of a small church organization. In support of the appeal, the petitioner submits a letter, evidence of the beneficiary's admission into the United States, and unaudited financial records.

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 petitioner is a nondenominational Christian religious organization established in February 1988. It is exempt from taxation pursuant to section 510(c)(3) of the Internal Revenue Code of 1986. Internal Revenue Service and State of Texas letters of exemption from taxation are contained in the record of proceeding.

The beneficiary is a native and citizen of Nigeria who was last admitted to the United States as a nonimmigrant visitor (B-2) on October 19, 1996, with authorization to remain until April 18, 1997. The beneficiary has resided in the United States in unlawful status since the expiration of her authorized period of admission.

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 examined in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous work experience in the proffered position.

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

> 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.

The petition was filed on April 4, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a religious occupation for the two-year period beginning on April 4, 1999.

On appeal, the petitioner provides a description of the beneficiary's prior work experience. The petitioner states, in part, that:

> [The beneficiary] was admitted to full membership by the church in October 1998, and two months later was appointed Minister for Women by the Counsel of Elders, with the charge to develop a program of ministry to women in the church and the community. In this capacity, she organized conferences, workshops and seminars for teaching, training and outreach to women; led intercessory prayer meetings held weekly; conducted midweek bible study and preached in neighborhood

> outreaches to apartments and Elderly Homes, and was responsible for counseling, praying with and visiting single women through the Care Ministry Program. She was also put in charge of preparing and setting up the elements for holy communion, as well as reproducing and cataloging songs for Sunday Praise and Worship. She devoted no less than 30 hours per week in and out of Church in completing the duties of this position.
>
> [The beneficiary] was neither offered nor paid any monetary compensation at the time of initial appointment to the position of Minister for Women. Since she had entered the U.S. on B2 status which disallowed any employment, the ministry was advised that any payment of compensation to her would constitute illegal employment and a violation of the terms of her b2 status. However, through the benevolence of a member, the ministry has provided shared apartment housing for the beneficiary since her initial appointment s as Minister for Women. Furthermore, individual members have often made "love offerings" for her support from time to time. Such love offerings should not be construed to indicate the ministry's inability to pay, and thus dependence on solicitations, but rather as a legally "safe" way to provide the necessary support 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. *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 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 proceeding 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" is also 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 studies. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

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).

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 be otherwise would be outside the intent of Congress.

In this case, the petitioner asserts that the beneficiary has served its ministry at least 30 hours per week as an unpaid volunteer since 1997. For the reasons discussed above, such service does not constitute continuous experience in a religious occupation. The Bureau is therefore, unable to conclude that the beneficiary had been engaged in a full-time salaried religious occupation during the two-year qualifying period. For this reason, the petition may not be approved.

The second issue to be addressed in this proceeding is whether the petitioner has the ability to pay the beneficiary the proffered wage.

Regulations at 8 C.F.R. § 204.5(g)(2) state, in pertinent part, that:

> *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 petitioner failed to submit any financial documentation with the initial submission of the petition. The Bureau requested the petitioner to submit information concerning its employees, including the number of sponsored religious workers. The petitioner responded, in part, that it had filed four other religious worker petitions and that three of those beneficiaries remained employed by the petitioner. The petitioner also submitted two bank statements indicating a total balance of $10,000. The petitioner did not submit evidence of its expenditures, the total number, titles, and salaries of its employees, or other additional information that would assist the Bureau in substantiating the petitioner's ability to pay the beneficiary.

On appeal, the petitioner submits unaudited fund balance and revenue and expense records for the years ending December 31, 2000 and 2001, as well as a January 2002 quarterly federal tax return. In the letter submitted on appeal, the petitioner states that:

> . . . While the ministry is relatively small, with very limited resources, we have been careful to match the offer with our ability to pay. [The evidence submitted] should provide sufficient evidence of the ministry's ability to pay. As is evident on the statements, the ministry currently has only one salaried position, that of Administrative Assistant. . . . The directing minister and other ministers (never beneficiaries of an I-360 filing) are paid allowances. The other ministers include a Minister for Worship and Assistant Pastor. Love offerings are given to visiting ministers who provide instruction or preaching only on certain special occasions.
>
> Since its founding, the ministry has sponsored a total of eight Religious Worker petitions, excluding the subject one. . . .

After a careful review of the record, it is concluded that the petitioner has failed to satisfactorily demonstrate its ability to pay the beneficiary the proffered wage at the time of filing the petition and continuing until the beneficiary obtains lawful permanent residence. The petitioner has failed to submit copies of its annual reports or audited financial statements for 2001, the time of filing the petition. In addition, the federal tax return submitted is only a partial report for 2001.

While the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the

secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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

ORDER: The appeal is dismissed.