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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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



File:  Office: VERMONT SERVICE CENTER

Date: **AUG 19 2003**

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:



PUBLIC COPY

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 Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. 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 him as a marriage (family) counselor at a weekly salary of \$300.¹

The director denied the petition, finding that the petitioner failed to establish that the position qualifies as a religious occupation and that the beneficiary had been and will be employed in a religious occupation.

On appeal, the petitioner submits a letter and additional documentation.

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

¹ The petitioner has variously described the position as "leader of marriage counseling" and "counselor of matrimones." Also, when filing the petition, the petitioner initially indicated the weekly salary to be \$350 (not \$300) plus health benefits.

(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 in this matter is described as a church having a congregation exceeding 100 families. Its denomination and/or affiliation is not indicated. The beneficiary is a native and citizen of Costa Rica who was last admitted to the United States as a nonimmigrant visitor on October 1, 1998.

The first issue to be addressed in this proceeding is whether the petitioner has established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

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

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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

In support of the petition, the petitioner submitted a letter dated January 31, 2001, describing the duties of the proposed position:

This outreach ministry consist [sic] of teaching biblical principles of matrimony in our school of ministry where [the beneficiary] leads couples into the Godly principles of marriage and home life. [The beneficiary] explains in detail the covenant of marriage and how it unfolds in the church and public life. Furthermore [the beneficiary] teaches discipleship classes to all new couples that join our church and that convert to our faith. These classes consist of home visitations where he establishes home groups that meet on a weekly basis. [The beneficiary's] responsibilities here are to develop other leaders of matrimony within these groups to further expand this outreach into the

community. This does not include his availability to be on call to counsel our 95 families at our church at any given time of need of crisis. [The beneficiary's] service also include [sic] coordinating monthly breakfast to service our couples and special events through the year when we service families and the community.

In response to the director's request for additional information, petitioner stated that the beneficiary had been performing services as a finance minister for the past two years, and provided documentation including a daily schedule of the duties of the proposed position and evidence of the beneficiary's training in the field of business. The director determined that the described duties, including such activities as office work, visitations, and various meetings with lay groups, do not necessarily require specialized religious training or involve traditional religious functions.

On appeal, the petitioner submits a letter noting that the duties of the position include office work, preparing lessons, visitations, meetings, counseling sessions, and teaching. The petitioner also submits documentation certifying that the beneficiary has completed various courses in leadership provided by the petitioner, including "New Members and New Converts," "Big Brother," "Understanding Church Life," "Discovering My Ministry," "Creation Therapy," and "Discovering My Temperament."

After a review of the record, it is concluded that the petitioner has not established that the proposed position constitutes a qualifying religious occupation. The petitioner has submitted no documentation to establish that the position is a traditional full-time paid occupation in its denomination. 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).

Furthermore, in reaching a determination on whether a position constitutes a religious occupation for the purpose of special immigrant classification, the Bureau must distinguish between common participation in the religious life of a denomination and engaging 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. Such voluntary positions filled by members of a congregation are not considered religious occupations. The Bureau interprets its own regulations to hold that religious occupations are full-time paid positions. While marriage and family counseling may be a tradition in many denominations, there is no evidence that the instant position is a traditional full-time

paid position with the prospective employer or its denomination at large. Therefore, it must be concluded that the petitioner has failed to establish that the proposed position constitutes a qualifying religious occupation.

The second issue to be addressed in this proceeding is whether the petitioner established that the beneficiary was continuously engaged as a marriage (family) counselor for at least the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, 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 16, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously carrying on the occupation of marriage (family) counselor since at least April 16, 1999.

The director determined that the petitioner had failed to establish that the beneficiary had the required two years of continuous experience in a qualifying religious occupation. The AAO concurs.

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 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); *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 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.

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.