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

Bureau of Citizenship and Immigration Services

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

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

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 21 2003

IN RE: Petitioner:
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: 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 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 youth director. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a youth director immediately preceding the filing date of the petition.

On appeal, the petitioner maintains that it has met its burden of proof.

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 December 16, 2000. Therefore, the petitioner must establish that the beneficiary was continuously working as a youth director throughout the two-year period immediately preceding that date.

Another issue in this proceeding is whether the petitioner has made a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a 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 how the alien will be solely carrying on the religious vocation and describe the terms of payment for services or other remuneration.

[redacted] the petitioner's administrative secretary, describes the beneficiary's work for the petitioner:

> [The beneficiary] voluntarily works as the New York District Youth Director. His responsibilities include organizing both children and young adults and provid[ing] counseling and teachings to help them stay out of drugs and any substance abuse.
>
> He also helps most of our children in making good decisions in their career vision and also motivates them to stay in school. [The beneficiary] currently has one hundred and fifty (150) children including youth under his care in our program.

[redacted] letter does not indicate when the beneficiary began doing this work.

[redacted] tates in a letter that he is "providing [the beneficiary] with room and board and financial support." [redacted] whose name appears in the church's articles of incorporation, does not mention the petitioning church in his letter or state that his support of the beneficiary is in any way contingent on the beneficiary's work for that church. [redacted] does not state whether or not he is related to the beneficiary.

Among the documents submitted with the petition is a program from a "Youth Movement Retreat" held in August 1998. The program identifies twelve elders, deacons, and ministers, including the beneficiary. The petitioner has also submitted a certificate showing that the petitioner ordained the beneficiary as an elder on June 16, 1996. Three training certificates in the record show that the beneficiary completed courses in "General Bible" in June 1998, "Christian Worker" in July 1999, and "Effective Evangelism" in October 2000.

The director instructed the petitioner to "[s]ubmit evidence that establishes that the beneficiary has the continuous two years full-time experience in the . . . religious work for the period immediately prior to December 16, 2000." The director also requested a variety of other documentation, such as evidence of the petitioner's ability to pay the beneficiary's salary.

In response to the director's notice [redacted] states that the petitioner has not employed the beneficiary because the beneficiary "does not have authorization to work." Rather, states [redacted] the beneficiary has worked as a volunteer during "[t]he last two years prior to Dec 2000." [redacted] states that the petitioner has "compensated [the beneficiary] with free room, and board allowance for necessities," and that the beneficiary also "receives cash (love offering) at times when he is preaching at other churches." [redacted] asserts that the petitioner can produce no tax records because "[w]e do not have any employed religious or non religious salaried employees." If the church really does have no salaried employees as claimed, the petitioner does not explain why the youth director will receive $300 per week. The petitioner submits copies of a small quantity of petty cash receipts bearing the beneficiary's name, dating back to November 1998. These receipts do not establish the extent to which the petitioner has been supporting the beneficiary.

The petitioner submits further schedules and other documents, containing occasional mentions of the beneficiary but nothing to persuasively demonstrate that the beneficiary has been working full-time for the petitioner since December 1998. The schedules are filled with numerous different names and reflect only a few hours of activity per week by the beneficiary, such as leading one discussion session or participating in a brief part of Sunday worship services. These schedules cannot suffice to substantiate the petitioner's claim that the beneficiary works full-time for the petitioning church.

The director denied the petition, stating that in the absence of tax records, "there is no evidence that the beneficiary ever worked for the petitioner." The director also indicated that qualifying employment must be full-time.

On appeal, the petitioner repeats prior claims and submits copies of previously submitted evidence. [redacted] asserts that the necessary training for the position includes the aforementioned certificates issued to the beneficiary in 1998, 1999 and 2000. If this training is necessary for the position, then the petitioner must explain why the beneficiary purportedly held that position before he had completed most of this training.

[redacted] national head of the petitioning church, states that sections 101(a)(27)(C)(ii)(II) and (III) of the Act require that the alien seeks to enter the United States "in order to work," not that the alien is already working. [redacted] fails to consider the subsection that immediately follows at section 101(a)(27)(C)(iii), which requires that the alien "has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period" immediately preceding the filing of the petition.

The petitioner maintains, on appeal, that the beneficiary has been receiving a "stipend" for continuous work throughout, and since, the qualifying period. As noted above, the financial and other documentation submitted in support of this claim is fragmentary at best, consisting of petty cash vouchers and grocery receipts, church programs reflecting the beneficiary's minor involvement in worship services, and the like.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states, in pertinent part:

> The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document . . . does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence . . . pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

The petitioner has not produced sufficient primary or secondary evidence to establish that the beneficiary's association with the petitioning church has been tantamount to full-time religious work. The petitioner has not explained why the beneficiary's purported continuous work has not generated a substantially greater amount of paperwork and related evidence. The evidence presented suggests that the beneficiary is one of a large number of elders, deacons and ministers who rotate through a variety of duties, with no plausible indication of full-time duties. Whatever its other obligations with regard to tax documents, the petitioner is a corporation and as such is obliged to maintain detailed and accurate financial records. The assertion that the beneficiary has received regular stipends (of an undetermined amount) is supported only weakly by a handful of receipts, covering irregular intervals and showing various amounts.

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.

The petitioner's claim that the church currently has no salaried employees at all, the implication being that the beneficiary will be the church's first (or at least only current) salaried worker, is unsubstantiated and lacks credibility. If the church indeed has paid no salary to any of its workers, then the church bears the burden of establishing that it will indeed pay a salary to the beneficiary.

The regulation at 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 above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The petitioner has submitted only bank statements, which do not provide a complete, reliable picture of the petitioner's financial status, and an unaudited financial statement.

For the reasons outlined above, the fragmentary evidence submitted with the petition is not sufficient to establish persuasively that the beneficiary has worked full-time for the petitioner since December 1998 as required by the statute and regulations.

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.