PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

AUG 21 2003

File: [redacted] Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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: [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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the decision of the director will be affirmed. The petition will be denied.

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 missionary.

The director denied the petition, finding that the petitioner failed to submit sufficient documentary evidence to establish that the beneficiary had been continuously employed in a religious occupation.

Counsel for the petitioner submitted a timely appeal of that decision, indicating that a brief would be submitted within thirty days of filing the appeal. As no brief was contained in the record of proceeding at the time the appeal was considered, the AAO summarily dismissed the appeal. On motion, however, counsel submits evidence that a statement and additional documentation were, in fact, timely submitted in support of the appeal. Therefore, the motion to reopen will be granted.

Counsel asserts that the beneficiary did in fact work for the petitioner on a full-time basis as a religious worker for the two years immediately preceding the date of filing the petition and that during that time, the beneficiary received direct compensation from the petitioner in exchange for those services. Counsel also asserts that the petitioner submitted sufficient financial evidence to support a finding that the petitioner had and continues to have the ability to pay the beneficiary sufficient compensation in return for his religious work.

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 in this matter is described as a nonprofit evangelistic missionary organization. The beneficiary is a native and citizen of Cameroon who was last admitted to the United States as an R-1 nonimmigrant religious worker on August 22, 1999 with permission to remain until August 15, 2000.[1]

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

The issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for 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 October 29, 1999. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least October 29, 1997.

The record includes the following documentation and information concerning the beneficiary's services as a missionary for the petitioner:

- The beneficiary's federal income tax returns,

---

[1] An alien with at least two years membership in a religious denomination may qualify for nonimmigrant R-1 classification under section 101(a)(15)(R) of the Act without a showing of prior work experience.

indicating that he earned income, derived from donations, totaling $4,193 in 1997, $1,566.60 in 1998, and $2,772.00 in 1999.

- A letter from the beneficiary dated October 13, 2000 stating:

> Yes, I do have a very low income because I am not salaried. [The petitioner] does not pay salary to any staff around the world. Each staff member is responsible to raise his own support for his living expenses. [The petitioner] has for four years subsidized part of my rent and utilities expenses, in an effort to lessen the financial burden on my family. We do receive various donations from individuals and churches such as clothing, groceries, a car, and monetary. We also take advantage of shopping at the Food Bank for most part. Our home church here is supporting us on a regular basis, a part from donation received through [the petitioner]. Since last April [the petitioner] transferred the house we were renting from them to us.

- A letter dated October 2, 2001 from the petitioner stating that (1) the petitioner provided the beneficiary with compensation for housing and utilities from 1998 through 2000; (2) the petitioner gave the beneficiary $18,000 equity in a house that it sold to him in April 2000; and (3) the beneficiary received benefits from the organization and its ministry partners totaling $17,250 in 1998, $23,595 in 1999, and $29,220 in 2000. The petitioner added:

> Please note that [the beneficiary] does receive additional compensation in the form of direct contributions from other organizations, churches, and individuals. Some of this is channeled to [the beneficiary] via the business office of [the petitioner]. Others choose to send their contributions directly to [the beneficiary], fully knowing his ministry assignment and accountability links with [the petitioner].

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.

After a careful review of the record and consideration of the intent of Congress, it is concluded that the petitioner has failed to overcome the director's objection to approving the petition.

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, the petitioner has not sustained that burden.

ORDER: The decision of the director dated September 14, 2000 is affirmed. The petition is denied.