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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

[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:

[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 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 religious school. 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 rabbi. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits documentation regarding the beneficiary's education, and contends that the beneficiary qualifies for the benefit sought.

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 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working in the position offered throughout the two-year period immediately preceding that date.

According to the I-360 petition form, the beneficiary entered the United States on March 3, 1996. Under "Current Nonimmigrant Status," the petitioner indicated "STUDENT." The beneficiary was 49 years old at the time of his entry, and 54 years old at the time of filing.

The director instructed the petitioner to submit various evidence, including "[a] detailed weekly work schedule for the beneficiary's religious work for the entire two-year period from April 1999 to present" and "[a] list of all jobs the beneficiary has held at any time during the period from April 1999 to present." The director also instructed the petitioner, which has identified the beneficiary as a "student," to provide copies of "transcripts for the courses he took in the United States as a student."

In response, Isaac Mandel, administrator of the petitioning school, states:

> [The beneficiary] obtained his ordination many years ago, and has been in the US studying advanced Rabbinics. Due to recent shortages we are in urgent need of qualified Rabbis to teach our students. The Rabbi will have a full time teaching schedule. . . . In addition to classroom hours, [the beneficiary] will spend extensive hours weekly, preparing classes and tutoring students. His starting salary will be $785 per week.

Mr. Mandel does not state that the beneficiary has already begun teaching or receiving payment. Given the petitioner's failure to identify any employment as requested, we must presume that the beneficiary has not been employed by the petitioner or by anyone else between 1999 and 2001. The petitioner submits a course transcript covering six semesters of study, but the document does

not provide any dates. Mr. Mandel's assertion that the beneficiary "has been . . . studying" indicates that those studies were still ongoing as of the petition's April 30, 2001 filing date.

The director denied the petition, stating "[t]he evidence of record does not establish that the beneficiary has been a full-time religious worker for the two-year period from April 1999 to April 2001." On appeal, the petitioner submits various documents as well as arguments from Rabbi Jacob Cohen, dean of the petitioning school.

Rabbi Cohen states that the beneficiary has been a member of the petitioner's religious denomination for over two years and that he "seeks to enter the US solely for the purpose of carrying on the vocation of a minister of that religious denomination." The director did not state otherwise in the decision (although the beneficiary's duties appear to match those of the religious occupation of religious teacher, rather than the vocation of a minister). The sole ground for denial centered on the beneficiary's lack of qualifying employment experience during the mandatory two-year period immediately preceding the petition's filing date.

Rabbi Cohen asserts that the beneficiary "is already in the US pursuing a full time religious vocation as a student." The petitioner submits nothing to establish that being a student constitutes a religious vocation.

Rabbi Cohen states:

> A Rabbi is, by definition, a teacher, and his task is a life long vocation. [The beneficiary] served as Rabbi, Scholar, Teacher, and Religious Worker within his community in Yemen for more than Thirty years. . . .
>
> For years he has led the morning prayers for students at [the petitioning school], and in addition to attending classes and seminars he has given his own informal lectures and classes in the evenings.
>
> [The beneficiary] continues to be on a full Fellowship in the United States, which is provided to advanced . . . students from poor countries. That means our organization provides him with a full tuition scholarship, and living expenses for him and his entire family. . . .
>
> [The beneficiary] has been a full time religious student since he entered the US in 1996. . . . The transcript, which was forwarded [previously] . . . established conclusively that [the beneficiary] pursued the vocation of a full time religious worker for the two year period from April 1999 to April 2001.

Rabbi Cohen's arguments are not persuasive. Counsel had indicated that the petitioner seeks to classify the beneficiary as "religious clergy." The reference to "clergy" is closest to the regulatory term "minister." The regulation at 8 C.F.R. § 204.5(m)(2) offers the following definitions:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.
>
> *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.

Pursuant to the above, an individual whose primary duty is religious instruction engages in a religious occupation rather than a vocation, regardless of whether that individual has previously earned the title of "rabbi." Ongoing study is not an occupation, and the fact that the beneficiary receives "a full tuition scholarship" only underscores the fact that students are not paid for their work; rather they pay the school for providing a service in the form of continued education. Study does not become an occupation merely because it is reimbursed by scholarship funds.

Furthermore, section 101(a)(27)(C)(iii) of the Act and 8 C.F.R. § 204.5(m)(1) require that the beneficiary must have spent the qualifying period not merely as a religious worker, but in the same occupation or vocation as the position offered. An alien cannot work in one vocation or occupation during the qualifying period, and then assume a different vocation or occupation upon approval of the petition. In this case, the petitioner seeks to employ the beneficiary as an instructor, but it did not employ him as an instructor from 1999 to 2001. Rather, the beneficiary was a student during that time, with his scholarship funds paying for his own instructors. The argument that the beneficiary has been a rabbi throughout the period in question is not persuasive, because the beneficiary's intended future duties are markedly different from his efforts as a student during the two-year qualifying period.

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).

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).

From the above case law, as well as the current statute and regulations, it is plain that a full-time student is not continuously engaged in a religious occupation or vocation. The beneficiary had not been working full-time as an instructor at the petitioning academy or any other school during the two years immediately prior to the filing date, and therefore, by law, the beneficiary was not eligible for the benefit sought as of that date.

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.