U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

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

[redacted]

File: WAC 00 031 52371 Office: CALIFORNIA SERVICE CENTER AUG 29 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:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Administrative Appeals Office (AAO) on motion to reopen. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

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 "Quranic religious instructor" at a salary of $2,000 per month.

The director denied the petition finding that the beneficiary's claimed part-time volunteer work with the petitioning organization was insufficient to satisfy the requirement that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel argued that the regulations do not require that the prior experience have been in a full-time paid capacity and that the AAO has so held in previous decisions.

The Associate Commissioner for Examinations dismissed the appeal reasoning that it had not been established that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period. In addition, the Associate Commissioner, beyond the decision of the director, also found that it had not been established that the prospective employer had shown that it is a qualifying religious organization exempt from, or eligible for exemption from, taxation as described in section 501 (c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

On motion, counsel argues that the beneficiary qualifies as a religious instructor and is needed as such. Further, counsel argues that the petitioner's tax exempt status was in effect at the time the petition was filed. On motion, counsel provides sufficient evidence to demonstrate that the petitioner, Dar Asalam Center, at the time of filing the petition was exempt from taxation as described in section 501 (c)(3) of the Internal Revenue Code as it relates to religious workers. Consequently, the petitioner has overcome this portion of the director's objections.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

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 the 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 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;
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

> An 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 organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. 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.

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 November 24, 1999. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation from November 24, 1997 until November 24, 1999.

The record contains a letter dated August 3, 1999, in which the petitioner's president states that the beneficiary has been teaching "voluntarily our children Quranic recitation . . . and Arabic class, starting July 9, 1997 until now, two times per week."

The director found that the beneficiary's claimed part-time voluntary services with the petitioning organization were insufficient to satisfy the requirement of having been continuously engaged in a religious occupation. The Associate Commissioner for Examinations, now the Administrative Appeals Office, concurred.

On appeal, counsel's argument relied heavily on three unpublished administrative decisions of the Bureau regarding appeals of special immigrant religious worker cases. Counsel was advised that, while it has not been shown that the facts of those cases are similar to this case, the unpublished administrative decisions have no binding precedential value. *See 8 C.F.R. 103.3 (c)*. Counsel was further advised that the Bureau is not bound by past decisions that may have been in error. *See Chief Probation Officers of Cas. V. Shalala,* 118 F. 3d 1327 (9th cir. 1997); *See also, Thomas Jefferson Univ. v. Shalala,* 512 U.S. 504, 517-518 (1994).

On motion, counsel directs the Bureau's attention to the decision of the United States District Court for the Northern District of New York which he contends dispels the notion that qualifying experience must be "paid experience." Counsel argues that "this notion" supported by no statue or regulation finds no support anywhere except a rash of decisions coming from the AAO since August 2000. Counsel further argues that in *St. John the Baptist*

Ukranian Catholic Church v. Novak, N.D. NY 00-CV-745 the court found the correct standard to be that the worker was "solely engaged in the occupation" and that the alien "was not solely dependant for her support on supplemental (non religious) employment or the solicitation of funds." Counsel contends that the Bureau's assertion that "the prior experience must have been full-time salaried employment" is simply an assertion that cannot survive a ruling by a United States court that is directly on point.

Counsel's contentions are not supported by the record as counsel has not provided a copy of the above mentioned court decision. The assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-,* 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

Also on motion, counsel argues that the Bureau, in determining the time spent by the beneficiary during the two year period, considered only a letter dated August 30, 1999, which spoke only of the two days that classes were provided to the children of the institution. Counsel claims that the Bureau did not consider documentation submitted with the appeal which showed that the duties of Quranic and religious instructors contain seven elements, and that since July 9, 1997, in addition to teaching children on Saturday and Sunday, the beneficiary's duties included preparing for and teaching Hadeeth Sheareef to adult members of the congregation on Fridays. Counsel contends that the teaching of the Hadeeth, and receiving of this teaching is an inseparable part of the institutions religious service.

In addition, counsel contends that the record also shows there are other duties the beneficiary performed for the congregation since July 9, 1997. Counsel states that these duties, when added together, "have equaled 35 hours per week for the required two-year period." It is noted that the record contains a schedule prepared by the petitioner's president, in which he states the beneficiary maintained a "schedule as Quranic and Religious instructor since July 9, 1997," which "includes conducting classes and additional hours each week preparing and correcting papers and meeting with school officials and parents."

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law 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 evidence contained in the record fails to demonstrate that the beneficiary had been engaged in a full-time salaried religious occupation during the two-year qualifying period. By his own

admission, the petitioner's president in a letter dated September 24, 2000, states that the beneficiary's services with the petitioner have been "on a volunteer basis."

Further, 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 within 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. The petitioner has not sustained that burden.

ORDER: The decision of the Associate Commissioner dated June 17, 2002, is affirmed.