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 01 043 53165 Office: CALIFORNIA SERVICE CENTER Date: AUG 9 2002

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 Acting Director, California Service Center, and is now before the Administrative Appeals Office 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 her as a religious education missionary worker.

The acting director denied the petition finding that the evidence of record was not sufficient in establishing that the beneficiary had been performing "full-time work as an Islamic Religious Study Teacher" for the two-year period immediately preceding the filing of the petition. It is noted that the director incorrectly stated the beneficiary's position title.

On appeal, counsel argues that the "beneficiary is and has been working on a continuous basis without any interruption in a religious occupation for over 2+ years before the petition was filed."

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 22, 2000. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation from November 22, 1998 until November 22, 2000.

In a verification of employment letter dated June 6, 2001, the senior pastor of the beneficiary's church in Seoul, Korea, certified that the beneficiary "served our Church as Director of Religious Education for our youth congregation from January 1, 1995 to September 30, 1999." The letter indicated that the beneficiary worked approximately 42 hours per week.

In a letter dated November 8, 2000, the petitioner's senior pastor states that the beneficiary has been a member of its church since October 1999. The letter indicates that in January 2000, the beneficiary "began to volunteer her services as a Religious Education Missionary Worker." The letter further indicates that the beneficiary is currently working for the petitioning organization in R-1 status as a religious education missionary worker, and that she has been paid a monthly salary of $1,475.00 since August 2000.

The record contains copies of cancelled checks paid to the beneficiary from the petitioning organization in the amount of $1,475.00 for September 24, 2000, October 24, 2000, November 26, 2000, December 24, 2000, January 21, 2001, February 25, 2001, March 25, 2001 and April 24, 2001. The monetary amount listed on the checks is what the petitioner indicates it paid the beneficiary as compensation for her services. It is noted that there is no cancelled check for the month of August, which is when the petitioner's pastor states the beneficiary began receiving a monthly salary from the petitioner.

On appeal, counsel argues that the director's position that the beneficiary's prior work experience be full-time salaried employment is not stipulated in either the statute or regulations. Counsel contends that the beneficiary has been continuously devoted to "this position since January 1995 in Korea receiving compensation through September 1999." Counsel further contends that the beneficiary continued her religious work at the petitioning organization starting in October 1999 to the present without interruption.

As previously stated, the record must demonstrate that the beneficiary had been carrying on a religious occupation for at least the two years preceding the filing of the petition. In this case, the petition was filed on November 22, 2000. Therefore, the petitioner must establish that the beneficiary was continuously and solely carrying on a qualifying religious occupation since at least November 22, 1998.

The record sufficiently demonstrates that the beneficiary has been employed by the petitioning organization as a religious education missionary worker since September 2000. Nevertheless, by the petitioner's own admission, the beneficiary merely was a member of the petitioning organization beginning in October of 1999, and

began volunteering her services as a religious education missionary worker in January 2000. Counsel's contention that "the beneficiary's lack of payment during the intermittent terms was voluntary for the periods specified to fulfill the duty on non-compensatory basis until her approved R-1 status" is not persuasive. Consequently, the petitioner has not demonstrated that from October 1999 until September 2000, the beneficiary was employed in a qualifying religious occupation. The evidence of record fails to demonstrate that the beneficiary had been engaged in a full-time salaried religious occupation 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. 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).

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).

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.

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 appeal is dismissed.