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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]

JUL 03 2003

File: WAC 01 218 53111 Office: California 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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center. The matter is now on appeal before the Administrative Appeals Office (AAO). 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 an assistant registrar for the School of Ministry at a monthly salary of $1,600.

The acting director denied the petition finding that the beneficiary's claimed service with the petitioner did not satisfy the statutory requirement that she had been continuously carrying on a full-time salaried religious occupation for the two-year period immediately preceding the filing date of the petition.

On appeal, counsel for the petitioner asserts: (1)) the regulations fail to state that the beneficiary must have been holding exactly the same position as the proffered position; and (2) the regulations do not require that the prior work experience must be full-time and salaried.

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 tax-exempt religious organization that trains and equips men and women for leadership positions in local churches and in translocal ministries. The beneficiary is a native and citizen of China who last entered the United States as an exchange visitor in October 1990 with authorization to remain until October 1992. The record indicates that the beneficiary has remained in the United States without authorization since the expiration of her authorized period of admission. The petitioner states that the beneficiary has been supporting her living in the United States with personal savings.

The issue to be examined in this proceeding is whether the petitioner has established that the beneficiary has the requisite two years of continuous work experience in the proffered position.

The record reflects that the beneficiary became a member of the Fellowship of Christ's Family in November 1992. The church states that the beneficiary entered its children's ministry at the end of 1993 and then shifted to the young adult ministry at the end of 1994. In 1995, the beneficiary became the pastor's assistant, where she remained, until she left the church in November 1997.

The petitioner states that from April 1999 through November 1999, the beneficiary was a member and a volunteer religious worker at the River of Life Christian Church. From December 1999 to April 2001, the beneficiary served the petitioner in various religious functions. The petitioner states that the beneficiary was a volunteer, did not receive any salary, and worked approximately 30 hours per week. While serving the petitioner during this time period, the beneficiary pursued a course of study at the petitioner's Leadership Institute. In December 2000, the beneficiary received a diploma entitled "Bachelor of Practical Ministry."

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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 June 22, 2001. Therefore, the petitioner must establish that the beneficiary has been continuously engaged in a religious occupation for the two-year period beginning on June 22, 1999.

The statute and its implementing regulations require that a

The statute and its implementing regulations require that a beneficiary has been continuously carrying on the religious occupation specified in the petition for the two years preceding the filing date of the petition. The regulations are silent on the question of volunteer work satisfying the requirement. The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule.

The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution.

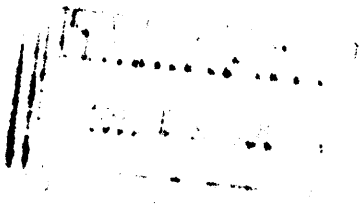
The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. *See* 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, the Bureau must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation.

It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. Nor is there any means for the Bureau to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For all these reasons, the Bureau holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious

occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

In this case, the petitioner has asserted that the beneficiary has performed voluntary, non-salaried services, on a part-time basis, since December 1999. For the reasons discussed above, such service does not constitute continuous experience in a religious occupation for the two-year period immediately preceding the filing date of the petition. The Bureau is therefore, unable to conclude that the beneficiary had been engaged in a full-time religious occupation during the two-year qualifying period. For this reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.