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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]

File: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 10 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: SELF-REPRESENTED

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, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. 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 an elder. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an elder immediately preceding the filing date of the petition.

On appeal, the petitioner argues that the director misinterpreted the evidence.

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."

The regulation at 8 C.F.R. § 204.5(m)(2) defines a "religious occupation" as:

> 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.

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 December 28, 2000. Therefore, the petitioner must establish that the beneficiary was continuously working as an elder from December 29, 1998 through the date of filing.

Re[redacted] pastor of the petitioning church, describes the beneficiary's past employment history:

> Regarding his service in churches in Mexico, [the beneficiary] served in the Presbyterian Church New Jerusalem . . . first as a deacon, 15 hours per week, and second, as an elder for 20 hours per week. He was involved with the supervision of the maintenance of the physical plant of the church, supervising minor construction, painting, and repairs. Administratively, [the beneficiary] helped with the tax paperwork of the church, and the training on administration issues of about fifteen mission congregations dependent on New Jerusalem Church. In the area of stewardship he supervised the collection of tithes and offerings and also the handling of finances. And finally, as part of the deaconate he was involved with mercy ministries and the formation of a plan to help the needy within and without the congregation. . . .
>
> [A]s an elder . . . [the beneficiary] exercised financial supervision of plan and budgets presented by the board of deacons. He also shepherded a mission church

> dependent on Nueva Jerusalén Church. As such he helped with preaching, teaching, Christian Education and the supervision of a lay worker to preach and teach on a monthly basis. Other areas of direction included music, visitation, and leadership.

Rev[redacted] does not specify when, or for how long, the beneficiary performed the above duties. Furthermore, he does not explain how he has personal knowledge to attest to the beneficiary's work at New Jerusalem Church.

In a separate letter, Rev[redacted] describes the beneficiary's intended duties with the petitioner:

> [The petitioner] desires to hire [the beneficiary] as a part time lay worker for 20 hours per week. His work would include: participation in the steering committee of the church as one of the leaders, particularly as the treasurer. He would also be, and has been for the last five years, an adult class teacher and leader of worship services. [The beneficiary] is and will be serving as the chairman of the evangelism committee, doing outreach for [the petitioner's] Mission. While he carries out these tasks he will continue as a seminary student at San Pablo Seminary in Juarez.
>
> For his work at [the petitioning church, the beneficiary] will be compensated **$1000 (One Thousand 00/100 USD) a month**. BEAMM will provide $500 a month for this project.

BEAMM stands for Border Evangelism and Mercy Ministries. The letter from BEAMM, pledging its support as described above, is signed by Rev[redacted] The record does not establish the relationship between BEAMM and the petitioner, or for that matter between Rev. [redacted] and Rev[redacted] BEAMM's letterhead lists several names, one of which is[redacted]

The petitioner also submits a letter from[redacted] of Lubriservicios, in Villahermosa, Mexico, indicating that the beneficiary receives 12,000 pesos per month to provide "advice and assessment to my company" with regard to "Labor/Technical Advice," "Bookkeeper/Accountant," and "Market Investigation." The letter, dated March 20, 2002, refers to the beneficiary's employment in the present tense.

The director denied the petition, stating that the petitioner has not shown that the beneficiary has two years of continuous experience in the same religious occupation for which the petitioner seeks to employ the beneficiary. The director concluded "[t]he evidence proves that the beneficiary has been involved in secular positions rather than as a Religious worker."

On appeal,[redacted][1] states "[t]he Service has misunderstood and mis-represents the evidence provided. . . . Beneficiary meets all statutory requirements for entry and will continue to pursue a religious vocation in the United States." In a separate letter, Rev.[redacted] acknowledges the beneficiary's secular employment for Lubriservicios, and states "the church [in Mexico] is too poor to support him, so in order to minister to the church, [the beneficiary] had to engage in part-time employment."

The beneficiary's duties as a deacon, as described above, appear to be pervasively secular, consisting predominantly of building maintenance and administrative duties. The beneficiary's duties as an elder are more religiously oriented, but these duties have been, and would continue to be, part-time, comprising 15 to 20 hours per week. The beneficiary's supplemental employment at Lubriservicios has been documented, and the petitioner states that if the petition is approved, the beneficiary "will continue as a seminary student at San Pablo Seminary in Juarez." The petitioner maintains that the petitioner will continue to supplement his income "as a part-time consultant."

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).

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. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 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). This particular case law is especially germane to the matter at hand, as it indicates that part-time employment by a seminary student

[1] The appeal form has been signed by "Aaron Zapata" on behalf of the petitioning church. Judging from strong similarities in the signatures, Aaron Zapata appears to be the same person as Rev. Francisco Aarón Zapata-Ruiz.

does not qualify as continuous employment. In the present proceeding, the petitioner seeks permanent immigration benefits for an alien who, rather than working full-time in the U.S., will be studying at a seminary in Mexico.

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 hold otherwise would be contrary to the intent of Congress.

The petitioner's description of the beneficiary's position as "a part-time lay worker" is, on its face, not qualifying. The petitioner's fragmentary and incompletely substantiated description of the beneficiary's past work does not establish that the beneficiary worked continuously in a religious occupation for at least two years prior to the petition's filing 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.