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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]

OCT 16 2003

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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, California 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 a general director of Christian education. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a general director of Christian education immediately preceding the filing date of the petition.

On appeal, counsel asserts that the evidence supports the petitioner's claim. Counsel argues that the beneficiary's work constitutes a religious vocation.

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 18, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a general director of Christian education from April 19, 1999 to the date of filing. The petition indicated that the beneficiary last entered the United States in 1990, and apparently has never had legal authorization to work in the United States. Reverend [redacted] states that the beneficiary "works approximately 35 hours per week" and has "received compensation from the Church in the form of room, board, and transportation" since 1997, and that "[u]pon approval of this petition," the church will pay the beneficiary "a salary of $1,200.00 per month."

In denying the petition, the director noted that the beneficiary received only room, board, and transportation, and concluded "the job experience claimed was . . . voluntary and not full time paid employment."

On appeal, counsel states "review of the evidence shows that the beneficiary has been working since 1997 as Christian Education Director. . . . From April 1997 to the present, the beneficiary worked approximately 35 hours per week and received compensation in the form of room, board and transportation." Counsel's statement presupposes that the record contains evidence that the beneficiary worked as claimed.

The director had previously requested "evidence of the beneficiary's work history." While the director had indicated that evidence of "payment through other forms of remuneration" besides "monetary payment," would be acceptable, it remains that the petitioner must submit evidence to establish this compensation. The petitioner's assertion, several years after the fact, is not evidence that the beneficiary has received room and board since 1997. Rather, this is simply a claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states, in pertinent part:

> The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document . . . does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence . . . pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

In this instance, the required evidence consists of contemporaneous evidence establishing that the petitioner compensated the beneficiary with room, board, and transportation during the two years immediately prior to the filing of the petition. The director specifically informed the petitioner that "the religious work must have been the beneficiary's primary activity," and the director instructed the petitioner to submit evidence to show how the beneficiary supported herself. The petitioner has offered only the claim that the beneficiary received room, board and transportation, without addressing the issue of whether or not the beneficiary had any other means of support during the relevant period. An unsubstantiated claim does not meet the requirements set forth at 8 C.F.R. § 103.2(b)(2)(i).

The director stated:

> True, the statute [and] the regulations [do] not stipulate an explicit requirement that the work experience must have been full-time, paid employment in order to be considered qualifying. This is in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that it may not be salaried in the conventional sense and may not follow a conventional work schedule.

Counsel asserts "[t]here is clearly a due process violation in this 'recognition of special circumstances of some religious workers' that differentiates without any legal bases between the special immigrants." The statute, by referring to "a religious vocation or occupation," recognizes that a religious vocation is not the same thing as a religious occupation. Otherwise, the phrase "vocation or occupation" would be meaningless. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987).

Furthermore, the regulation at 8 C.F.R. § 204.5(m)(2) offers separate definitions for "religious occupation" and "religious vocation":

> *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.
>
> *Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Because the statute differentiates between a religious occupation and a religious vocation, and the regulation offers a sharp distinction between the two, it is not a violation of due process to recognize the differences between the two classifications.

Counsel then states "[t]he Bible clarifies who are (Christian) brothers and those with a calling to religious life: 'Now concerning spiritual gifts brethren (or brothers) . . . God has appointed these in the Church, first apostles, second prophets, third teachers . . .' (1 Corinthians 12:1,28)." Thus, by counsel's reasoning, teachers are "brethren," hence "brothers," hence "religious brothers" who fall under the regulatory definition of a religious vocation.

Counsel's analysis is flawed and relies on a highly selective reading of the passage cited. Throughout 1 Corinthians, the term "brethren" appears frequently, usually as an interjection. For example, the full text of 1 Corinthians 12:1 reads "[n]ow concerning spiritual gifts, brethren, I would not have you ignorant." Used in this way, "brethren" clearly refers collectively to all members of the Christian church, which at the time was still in an embryonic and only loosely organized state. If all Christians are "brethren," and therefore "religious brothers and sisters," then by counsel's logic every practitioner of the Christian faith, regardless of occupation, practices a religious vocation. Clearly this is overly broad.

Furthermore, counsel's fragmentary citation takes the passages quoted out of context. 1 Corinthians 12, in its entirety, states that just as the parts of the human body carry out different functions such as hearing and seeing, different members of the church possess different "spiritual gifts." 1 Corinthians 12:28 reads, in full, "And God hath set some in the church, first apostles, secondarily prophets, thirdly teachers, after that miracles, then gifts of healings, helps, governments, diversities of tongues."[1] Given the complete list, which refers to the exercise of what amount to supernatural powers (the "spiritual gifts" mentioned in the first verse), the

[1] The wording varies from the quotation cited by counsel because a different translation has been consulted.

reference to "teachers" cannot refer to the modern conception of teachers, even if we consider the position of "general director of Christian education" to be fully synonymous with that of "teacher."

Furthermore, the above regulatory definition of "religious vocation" requires "demonstration of commitment practiced in the religious denomination, such as the taking of vows." Counsel does not address this integral portion of the definition. The record contains no evidence to show that the beneficiary is bound by an oath or vow, or a similarly binding demonstration of commitment, to work as a teacher or general director of Christian education.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.