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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: VERMONT SERVICE CENTER Date: JUL 16 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:

[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, Vermont 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 catechist. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a catechist immediately preceding the filing date of the petition.

On appeal, counsel argues that the director disregarded material information and based the decision on the petitioner's failure to submit a document that the director had not previously requested.

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 23, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a catechist from April 24, 1999 to April 23, 2001. The petition indicated that the beneficiary last entered the United States on September 14, 1996 as a visitor.

Fathe[redacted] pastor of the petitioning church, states in a letter dated April 18, 2001 that the beneficiary "will be a catechist in our Portuguese language religious education program. This is a full time position (at least 35 hours per week) and will be remunerated at an annual salary of $22,000.00 including housing and food." Fathe[redacted] offers the following breakdown of the petitioner's claimed duties:

Teaching Religion to Adults (Monday through Friday)	5:00 – 9:00 p.m.	20 hours
Youth groups' leadership (Wednesday and Saturday)	6:00 – 9:00 p.m.	6 hours
Adults' Bible classes (Monday, Thursday and Friday)	6:00 – 9:00 p.m.	9 hours
Preparation and participation in Parish masses (Sunday)	5:00 – 8:00 p.m.	3 hours
Total:		38 hours

The above total of 38 hours is inaccurate because the hours between 6:00 p.m. and 9:00 p.m. on Monday, Wednesday, Thursday and Friday are counted twice. The actual total is 26 hours, which is not full-time employment.

Following a request for additional information and evidence, Fr[redacted] has described, in a letter dated March 20, 2002, what appear to be largely new terms of employment:

> [The petitioner] proposes to hire [the beneficiary] as a bilingual (Portuguese-English) religious worker with a salary of [$]25,000.00 per annum. This position is permanent and he will be required to work at least 35 hours per week. His duties will include:

1. Religious education to the parish school's children. Monday, Tuesday, Wednesday, 9am-2pm (15 hours total)
2. Planning and supervising series of meetings for the parents of Portuguese speaking students: Bible study, oversight of Christian service projects for those to be confirmed Roman Catholics, Thursday 1-7pm (6 hours).
3. Planning and Coordinating a program of Youth ministry for Portuguese speaking youth of public schools who attend our religious education program: preparation of youth for reception as converts into the Catholic Church. Friday 1-7 pm (6 hours).
4. Catechesis to senior citizens of the parish, Monday and Wednesday, 3-6pm (6 hours).
5. Mass preparation, Saturday, 9am-12pm (3 hours).

Fr[redacted] adds that the beneficiary also "attends religious services and supervises children during special celebrations in the parish. He also prepares and animates the Holy Mass during Sunday (6-8pm)." Fr.[redacted] does not explain why the above duties and work schedule differ so radically from those described in his earlier letter of April 18, 2001.

F[redacted] has stated "[f]or approximately two years [the beneficiary] has been providing his services as a religious worker in our church on a voluntary basis." Fr.[redacted] does not specify whether the beneficiary's claimed duties during those two years are the duties described in the April 18, 2001 letter, or the very different duties described in the March 20, 2002 letter. If the beneficiary's duties have consistently been between 5:00 p.m. and 9:00 p.m. as initially described, the beneficiary has not worked full-time. If, on the other hand, the beneficiary has never worked those hours and has no intention to do so, then their presence on the claimed work schedule would appear to require some explanation.

In the request for evidence, the director requested copies of tax documents establishing the beneficiary's compensation during the relevant two-year period. The director added "[i]f the past experience was gained on a volunteer basis, submit evidence that explains how the beneficiary supported herself/himself."

In response, Fr[redacted] has asserted that the beneficiary "has paid his income taxes for the past two years." The beneficiary's income tax returns show no income from wages or salaries, but they reflect business income in the amount of $4,269 in 2000 and $8,085 in 2001. The petitioner also paid a self-employment tax during this time. A Form 1099-MISC indicates that Hoffman Contracting paid the beneficiary $12,270.15 in "nonemployee compensation" in 2000 (a year in which the beneficiary claimed barely a third of that amount in business income). On his 2000 income tax return, the beneficiary identified his occupation only as "contracting." On the 2001 tax return, the beneficiary described his occupation as "homecare attendant." Clearly, the beneficiary did not consider his occupation to be that of a catechist during 2000 or 2001. If the beneficiary's work as a contractor or homecare attendant was performed during standard work hours, then it would be consistent with the original April 18, 2001 work schedule that indicated that the beneficiary worked for the church only during evening hours, 26 hours per week.

The director denied the petition, citing a lack of evidence that the beneficiary had been continuously employed in a religious occupation for at least two years immediately prior to the filing date. In denying the petition, the director stated "[t]he beneficiary has a Social Security Number, however, without W-2's and copies of the beneficiary's tax returns, there is no evidence that the beneficiary ever worked for the petitioner." As discussed above, however, the petitioner has indeed submitted copies of the beneficiary's tax documents from 2000 and 2001. These documents show a Social Security number for the beneficiary, despite the petitioner's "N/A" notation on the I-360 petition form that implied the beneficiary had no such number.

On appeal, counsel protests the "denial of the petition for failure to submit a particular document which was not previously requested." The director's request for evidence did not specifically request the beneficiary's Forms W-2, but it clearly indicated a request for the submission of tax documents. The director mentioned Forms W-2 in the denial notice, but it does not appear that the petitioner's failure to submit those specific documents was the fundamental basis for the denial. More generally, the petition rested on the petitioner's failure to produce satisfactory documentation to show that the beneficiary had indeed worked as claimed.

Counsel asserts that the petitioner has already explained that the beneficiary worked for the church on a volunteer basis, and that the director erred by failing to take this information into account. Nevertheless, as explained above, the petitioner's account of the beneficiary's work has been inconsistent, and documents submitted by the petitioner show that the beneficiary supports himself through other means and, on his income tax forms, has shown his occupation as something other than catechist. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The petitioner submits a letter from [redacted] coordinator of the Brazilian Ministry, who states:

> I started to use [the beneficiary's] services in February of 1998 in connection with the activities of the Brazilian Community at Our Lady of Mount Carmel Church.
>
> . . .
>
> In September, 2000, the Brazilian Community moved to [the petitioning church]. In the years 2001 and 2002 [the beneficiary] continued performing in the new location, the same work he was doing in the previous one.

[redacted] a parishioner at the petitioning church, states that the beneficiary devoted "a large amount of his time" to his various duties at the church during the period described by Fr. [redacted] Another parishioner [redacted] states only that the

petitioner has "volunteered at our church" for several years, with no description of the beneficiary's work except to state that the beneficiary "has helped organized [sic] groups to help with charity work."

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).

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 totality of the evidence of record prohibits the conclusion that the beneficiary has been continuously employed as a catechist during the two-year period immediately preceding the filing of the petition. At best, the beneficiary has offered part-time volunteer services while earning all

of his income outside of the church, a situation that applies to a great number of dedicated churchgoers who do not consider themselves religious workers or church employees.

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.