U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

C1

File: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 18 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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On appeal, the petitioner submits documentation regarding the beneficiary's work in Italy.

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 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor from May 1, 1999 to the date of filing. The petition indicated that the beneficiary last entered the United States on January 10, 2001 as a B-1/2 visitor.

The petitioner's initial submission consists of little more than the beneficiary's certificates of ordination from the United Christian Church and Ministerial Association, dated annually from 1992 to 2001. The certificates indicate that the ordination itself is permanent, although it is reaffirmed annually with a new certificate. The record contains no evidence about the training or education leading up to the beneficiary's ordination in 1992.[1]

The director requested further evidence, at which point the petitioner submitted the beneficiary's 2002 certificate of ordination along with other evidence and a description of the petitioning church and the beneficiary's duties therein.

[redacted] senior pastor of the petitioning church, states:

> Presently the [petitioning] church has a congregation of 44 members. . . .
>
> [The beneficiary] is an ordained minister and has been working as a Pastor for the [redacted] for many years. He has been a member of our Church since 1985. . . . He has been acting as an Assistant Pastor at our church in Charlotte, North Carolina, since March 2001.
>
> Following is the breakdown of his weekly activities in the church:
>
> - Sunday Service – 7 hours

[1] An application for ordination and a minister's license from the United Christian Church and Ministerial Association is available via the Internet at http://www.catndogsitter.com/ucma/license.htm. The application consists of a 10-question survey, and requires the signatures of two ministers. The only question that pertains to formal training is question 6, "[a]re you enrolled in our Bible Study Course?"

- House Fellowship – 3 hours
- Tuesday Bible Study – 3 hours
- Saturday Prayer Meeting – 2 hours
- Prayers and Preparations – 16 hours
- Evangelism – 5 hours
- Visitation – 4 hours

> He has been leading and teaching bible study, preaching at retreat, leading prayer meeting and home caring fellowship. When he is employed he will work full time and will be paid $1800.00 per month. . . . Prior to the time he arrived in the United States, he was the Pastor of anothe[redacted] congregation . . . [in] Brescia, Italy, from 1996 to January 2001.

The statement "[w]hen he is employed" implies that the beneficiary is not yet "employed" as such by the petitioning church. Regarding the beneficiary's work in the United States, the petitioner submits programs from worship services in late 2001 and early 2002, after the qualifying two-year period.

Regarding the beneficiary's work prior to his arrival in the United States, the petitioner has submitted a letter fro[redacted] (the [redacted] asserting that the beneficiary [redacted] a branch of [redacted] from December 1996 to January 2001." [redacted] i asserts that the beneficiary "was physically in charge" of one church while supervising activities at two other branches.

The record contains a copy of the beneficiary's passport, issued at Ghana's embassy in Rome in September 1995. Under "Profession," the passport identifies the beneficiary as an "Auto Mechanic," despite the fact that the beneficiary was purportedly ordained as a minister on March 11, 1992, and recertified every year after that. The passport contains United States nonimmigrant visas issued to the beneficiary in May 1996, June 1997, May 1998, March 1999, and March 2000, the stated purpose being for the beneficiary to attend ministerial conventions in the United States.

The director denied the petition, stating "the beneficiary does not have a Social Security Number and without W-2s and copies of the beneficiary's tax returns, there is no evidence that the beneficiary ever worked for the petitioner." The director concluded "[t]he record does not establish that the beneficiary has the required two years of experience in the religious occupation."

On appeal, counsel states "the Petitioner has submitted evidence that the Beneficiary was solely engaged in a religious occupation at the Italian church." The petitioner, however, had submitted only ordination certificates and a letter from the Italian church. This letter did not indicate that the beneficiary was solely engaged as a pastor; the letter neither mentioned nor denied outside employment. Because the beneficiary's own passport, issued several years after his ordination,

identifies him as an "auto mechanic" rather than as a clergyman, we cannot conclude that the documentation submitted is proof of exclusive employment as a pastor.

In the initial appellate filing, counsel indicated that the petitioner would submit "financial records from the [redacted] attesting that the Beneficiary possessed at least two years prior related experience." Subsequently, the petitioner has submitted copies of Italian documents and, eventually, English translations thereof. The documents, however, are not "financial records."

One of the documents appears to be a combination lease and permit, issued to the beneficiary by the municipality of Brescia, permitting the beneficiary to conduct religious services in a "room" on Via Lavorno from 10:00 a.m. to 2:00 p.m. on Sundays. The document is dated May 18, 1999, and covers the period from October 1, 1999 to September 30, 2000. This document shows that the beneficiary was involved in conducting religious services for four hours per week. The business address of [redacted] matches the beneficiary's residential address and identifies him as the president of the organization. The document offers no evidence of the beneficiary's activity as a pastor outside of the four hours per week specified on the document.

A *Constituzione di Associazione*, translated as "Company Establishment," identifies the beneficiary as one of eight founders of [redacted].[2] The document is dated August 5, 1997. The petitioner had previously submitted a letter claiming that he had begun working "as a pastor in Deeper Life Bible Church . . . [in] December 1996," eight months before August 1997. The document identifies the beneficiary as a mechanic; several other founders are deemed "workmen." Only one founder is identified as holding a "religious" occupation.

This documentation is inconsistent with previous claims. Supposedly the beneficiary began working as a pastor for [redacted] in December 1996, although that organization had no formal structure until eight months later. Furthermore, even though that organization purportedly employed him as a pastor beginning in 1996, its own documents refer to the beneficiary as a "mechanic" in the latter half of 1997.

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 record is silent as to how the beneficiary has supported himself since his January 10, 2001 arrival in the United States; the petitioner states that it "will" employ the beneficiary, not that it already does so. The director's notice of denial specifically mentioned the absence of evidence regarding the beneficiary's compensation by the petitioner; the petitioner has responded with documents from Italy. As noted above, none of the above materials are "financial records" and they contain no proof that the beneficiary has ever received any remuneration for his work as a

[2] Although the organization was founded in Italy, all of the founders are from West African nations.

pastor. The evidence of record does not show that the beneficiary has been, or will be, solely employed as a pastor.

Beyond the above issues, the record shows that the beneficiary left Italy no later than January 10, 2001 and did not begin serving the petitioning church until March 2001. Thus, there was an interruption of at least seven weeks between January 10 and February 28, 2001, during which time the beneficiary was not carrying on the vocation of a minister. Seven weeks is the minimum, based on the unsupported assumptions that the beneficiary worked in Italy until the day he left, and that he began working for the petitioning church on the first day of March. The interruption could have been eleven weeks or more. Thus, the beneficiary was not performing such duties continuously as required by regulation and statute.

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).

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 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.