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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: NEBRASKA SERVICE CENTER Date: JUL 31 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, Nebraska Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, and the petition will be denied on its merits.

The petitioner is a religious society. 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 prophet. The director determined that the petitioner had not established that had the requisite two years of continuous work experience as a prophet immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

The AAO summarily dismissed the appeal because the appeal documents contained in the record promised a future brief but offered no substantive arguments. The record at that time did not contain any subsequent brief. On motion, the petitioner produces documentation showing that the U.S. Postal Service did in fact deliver the brief during the time requested, although it did not reach the record of proceeding prior to the appellate review. We hereby reopen the petition in order to consider the arguments contained in the brief.

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.

8 C.F.R. § 204.5(m)(2) offers the following definitions:

> *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.

The petition was filed on October 2, 2000. Therefore, the petitioner must establish that the beneficiary was continuously working as a prophet throughout the two-year period immediately preceding that date. The petitioner must also show that the beneficiary's duties have consistently amounted to either a religious occupation or a religious vocation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The

statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

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).

In a letter accompanying the petition, [redacted] president of the petitioning entity, states that the beneficiary received "the gift of prophecy" in the late 1980s and subsequently traveled to the United States after he interpreted Biblical verses such as John 4:44, "a prophet has no honor in his own country," as a call to leave his native Canada. Ms. [redacted] states that the beneficiary was initially unaware that "he required special documentation to perform his ministry here," but he "is currently seeking compliance with government regulations regarding his presence here so as not to operate his ministry in violation of scripture," which commands submission to secular as well as religious laws. Ms [redacted] asserts that the beneficiary's "work history for the past two years while living here in this former convent has been church work exclusively. A seminary type regimen of regular scripture study, prayer, private and public devotions, and works of charity has been maintained throughout that time period." Ms [redacted] adds "[a]s to this ministry, we don't foresee it being confined to our parish, or our city, or even our state." Ms. [redacted] foresees "international demand for its services."

The director instructed the petitioner to submit further evidence and information. The director requested "a detailed job description which specifies the duties the beneficiary will be performing

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[1] When typed, this individual's surname is invariably spelled [redacted] with no "c." Her signature, however, very clearly reads [redacted] and we have used this latter spelling throughout this decision.

and provide **evidence** of the beneficiary's qualifications" (emphasis in original). The director also requested evidence of the beneficiary's activities during the two-year qualifying period.

In response, Ms [redacted] states:

> The beneficiary is to hold a position which one who has received the gift of prophecy occupies. . . . [This gift] enables its recipient to understand . . . the allegorical, analogical, metaphorical, and fragmental texts which most biblical prophecies are veiled in. It also enables its recipient to understand which prophecies have been fulfilled and which ones have not. . . . A church member who conducts this activity (called prophesying), with this gift is called a prophet, and these respectively are the duty and title of the beneficiary.
>
> As is the case with most occupations, a period of learning and training is needed before the worker can offer the services as a benefit to anyone. Preparatory duties of this type have dominated the schedule the beneficiary has maintained during the past two years. He has had to abstain from ministering prophesy during that time because conducting that activity in this country, with a presence not conforming to its laws, would violate that code of righteous and ethical conduct, issued at length in the very scriptures he is to expound.

Ms [redacted] offers a point-by-point description of the beneficiary's duties during the qualifying period, some of which "occur internally or are performed in private." Among these duties, Ms. [redacted] indicates that the beneficiary "sought to enrich and strengthen his love of God," "strived for in-depth knowledge and understanding in all areas of scripture by maintaining a very structured routine of study, prayer, careful attention to radio broadcast of scriptural programs, and by seeking viewpoints of others," and "strived for a blameless reputation and built a history of good works to augment the credibility of his ministry." Ms [redacted] states that the beneficiary has engaged in such activities for twelve years. She does not indicate how much additional time will be needed for the beneficiary to complete his "preparatory duties" and his "period of learning and training."

M [redacted] states that the beneficiary has received a "civic award" for his "assistance to programs serving the poor and homeless populations." The evidence for this claim consists of a plaque showing that the petitioner's "Volunteer Staff" won a 1998 U.S. Mayors' End Hunger Award. The award does not mention any staff member by name, but the petitioner asserts that the beneficiary's involvement was instrumental in earning the award.

[redacted] vice president of the petitioning entity, states:

> I should make it clear that we are not hiring him, but we do intend to support him while he performs his ministry. As long as is needed we will provide him with room and board in the lower level of this former convent building, where our

> offices are located. We have also agreed to provide him with a weekly allowance of forty-five dollars. . . .
>
> [The beneficiary] expects that at some point in the future, interest and demand for the services of his ministry will require that he travel.

The director denied the petition, stating that the petitioner has provided only a vague description of what it is that the beneficiary would actually be doing as a prophet. The director also noted that, during the two-year qualifying period, the beneficiary has been engaging in "learning and training" that are "preparatory" to future work as a prophet. Training and preparation do not constitute actual experience in a religious occupation. Furthermore, the petitioner has stated that the beneficiary "has had to abstain from ministering prophesy" ever since he learned that he was not authorized to work in the United States, which indicates an interruption in work that must, by law and regulation, be continuous throughout the two-year qualifying period.

The director also noted the petitioner's specific assertion that it will not actually hire the beneficiary, and that the beneficiary will likely travel to some other unspecified destination. The director concluded "the position is not a permanent, full-time, salaried occupation within the denomination. . . . As the beneficiary has not been offered a specific position by the petitioner and is in fact expected to leave the petitioner's parish, it does not appear that a valid job offer exists."

In the appellate brief, which the AAO initially was unable to consider because it never reached the record of proceeding prior to the instant motion [redacted] (identified as a "representative member" of the petitioning entity) states that the statute and regulations do not specifically require "permanent, full-time, salaried" employment, and the regulatory inclusion of "cantor" among religious occupations "indicates that . . . full-time is <u>not</u> a regulatory requirement, because most cantor positions can't be classified as such." The petitioner thus implies that an alien ought to be eligible for permanent, employment-based immigration benefits based on temporary, part-time, unpaid volunteer work. Because a substantial number of church members engage in part-time volunteer work, by the petitioner's logic, active church membership is *prima facie* evidence of eligibility. Clearly this is not the case, because the statute and regulations contain separate requirements of church membership and engagement in a religious occupation.

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.

Ms [redacted] argues that while the beneficiary's work as a prophet requires no specific "schooling," that work nevertheless requires other types of qualification. Even if we assume that prophecy is a recognized occupation with clearly defined duties, by the petitioner's own words the beneficiary was not engaging in that occupation during the relevant two-year period. Rather, the beneficiary was engaging in "preparatory . . . learning and training" during that period. Clearly the petitioner distinguishes between preparation, learning and training on the one hand, and actually engaging in prophecy on the other hand. If there were no difference, then it would be meaningless to say that the beneficiary engaged in such preparation or training. The statute and regulations do not provide for the admission of seminary students, on the grounds that they will eventually become ministers. By the same logic, we cannot state that an alien who has spent two years "training" is eligible for the classification while that training is still ongoing.

Ms. [redacted] asserts that the director has "misperceived" the nature of the beneficiary's work, and thus has mislabeled as "training" many of the beneficiary's permanent duties. Nevertheless, Ms. [redacted] (in a letter witnessed by Ms [redacted] and two others) had specifically stated that "learning and training is needed before the worker can offer the services as a benefit to anyone. Preparatory duties of this type have dominated the schedule the beneficiary has maintained during the past two years." Ms. [redacted] offers no credible explanation that would show that this passage means anything beyond what it plainly says.

The petitioner acknowledges that the beneficiary "has had to abstain from ministering prophesy during that time," and that his schedule during the qualifying two years was "dominated" by training and preparation which "is needed before the worker can offer the services as a benefit to anyone." Clearly, the beneficiary was not offering these services during the qualifying period. Ms. [redacted] argues that the beneficiary's work consists of several different duties, and contends that the beneficiary has performed nearly all of the duties of a prophet, with the sole exception of the act of prophecy itself. Ms [redacted] asserts that the director has unfairly focused only on this one function of prophecy, and ignored the beneficiary's other duties. The petitioner has earlier described these other duties as a "seminary-type regimen," consistent with their description as "training." We cannot plausibly find that the beneficiary has accumulated qualifying experience as a "prophet" when he has admittedly abstained from performing "prophecy" – the one act that literally defines a prophet – during the qualifying period. The remaining duties, as described, consist partly of study and introspection, and partly of volunteer work that is commonly undertaken by dedicated church members and which does not constitute an occupation or vocation. The director did not act unreasonably by finding that an individual who abstained from prophecy was not working in the capacity of a prophet.

Ms [redacted] asserts that the statement that "we are not hiring" the beneficiary "should not be misconstrued to mean we won't be paying him to perform religious duties." Ms [redacted] adds that the word "'[h]ired' is a term not suited to some religious occupations (e.g. monks), of which this is one, and we avoid its use at the beneficiary's request." We duly note this assertion, but we also note that the statute and regulations differentiate between a religious occupation and a religious vocation. A monk, to use the petitioner's example, works in a religious vocation involving some form of formal commitment such as vows. A religious occupation, on the other hand, involves a more typical employment situation. Despite the director's request that the petitioner specify whether the beneficiary's position is an occupation or vocation, the petitioner has apparently never provided a clear answer to this question. The petitioner uses the term "occupation," but then refers to "monk" as an occupation. Clearly, the petitioner's use of the term "occupation" differs from the regulatory sense of the word. If "prophet" is an occupation, then the beneficiary would in fact be hired and paid a regular wage, even if the beneficiary would rather use a word other than "hired." If, on the other hand, "prophet" is a vocation, then there ought to be some indication of formal, permanent commitment beyond the petitioner's general assertion that the beneficiary senses a divine calling to prophecy. This issue remains unresolved, although for the purposes of this proceeding it is moot because the petition is not otherwise amenable to approval.

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 Administrative Appeals Office's summary dismissal dated July 18, 2002 is withdrawn. The appeal is dismissed on its merits.