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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]

JUL 31 2003

File: [redacted] Office: NEBRASKA 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, Nebraska 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 assistant pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition.

On appeal, counsel argues that the director has imposed requirements unsupported by law.

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 June 13, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor or assistant pastor throughout the two-year period immediately preceding that date.

Officials of Elim Pentecostal Church [redacted] state in a joint letter that the beneficiary became pastor of the church on November 7, 1996. The letter does not specify when the beneficiary stopped working for the church, but a list of the beneficiary's activities contains no specific date after January 2000. Near the end of the letter appears a passage indicating that the beneficiary was involved in the building of a new church, from March to September 1999.

The beneficiary was admitted into the U.S. on February 4, 2000. The record contains a job offer letter from the petitioner, offering the beneficiary a monthly wage of $2,300 to serve as assistant pastor. The letter does not indicate any then-existing employment relationship; it refers instead to arrangements that will be made once the beneficiary begins working for the petitioner.

The director requested additional information to establish the beneficiary's work history during the two-year qualifying period. The director stated "[t]he evidence submitted indicates that the beneficiary was employed by the Elim Pentecostal Church until September 1999." This finding appears to derive from a misreading of the church's multi-page letter. The last date to appear in the letter is indeed September 1999, but the letter also refers to the beneficiary's activities after that date, for example baptisms in November 1999 and a funeral in January 2000. The letter therefore indicates that the beneficiary worked for the church in Romania until shortly before his departure for the United States in early February 2000.

In response to the director's request, the petitioner has submitted another joint letter from officials of Elim Pentecostal Church, indicating that the beneficiary was a pastor at the church from November 1, 1996 to February 1, 2000. Reverend [redacted] former pastor of the petitioning church, states that the beneficiary "has been a member of our congregation and serve[d] as a minister of the Gospel since February of 2000." Acting pastor Rev [redacted]

describes the beneficiary's duties from February 6, 2000 onward, and states that the beneficiary provided his services "voluntarily, without [being] paid by the church or any other member from [the] church." Ref[redacted] states that the beneficiary received room, board, and the use of a car from his cousin, and a "few fellow brothers from church [provided] clothing, food, and other personal necessary items."

The director denied the petition, stating that "the beneficiary was not engaged in full-time salaried employment but was performing volunteer religious duties for the petitioner while being supported by outside sources." On appeal, counsel asserts that the regulations do not specifically require the past employment to be salaried. Counsel states "[i]t has long been customary for religious workers to either volunteer their time due to their faith OR to receive compensation from Church and community members. Religious calling and faith are the guiding principles for the religious worker's devotion to his job, not his salary."

Counsel offers no support for the general claim that unpaid religious work "has long been customary." It remains that, pursuant to section 101(a)(27)(C)(ii)(I) of the Act, the alien must seek to enter the United States "solely for the purpose of carrying on the vocation of a minister" and 8 C.F.R. § 204.5(m)(4) requires evidence to establish "terms of payment for services or other remuneration" and to "clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support." Plainly, the statute and regulations do not contemplate volunteer work by an alien who depends on donations for support. The petitioner seeks an employment-based immigrant classification on the beneficiary's behalf; the classification is not merely a reward for volunteer work.

After asserting that it is customary for religious workers to receive no pay, counsel asserts that the beneficiary "was being compensated for his services, which were clearly full-time in nature." Counsel appears to refer to the material support that the beneficiary received from parishioners and from his cousin. The support provided to him by his cousin and by others was originally described as charitable giving, not contingent on the beneficiary's work for the church. The petitioner has not, for instance, claimed that the beneficiary's cousin would have denied him food and shelter had the beneficiary not chosen to work for the church. To conclude that this support was compensation for services, as counsel now claims, flatly contradicts Rev.[redacted] assertion that the beneficiary was not "paid by the church or any other member from [the] church." For counsel's assertion on appeal to be true, Rev.[redacted] previous statement must necessarily be false. At one point, counsel states "the Church did not compensate" the beneficiary, and in the next sentence counsel asserts that the beneficiary was "receiving compensation." In any event, the assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts "the Church did not compensate [the beneficiary] as he was not employment authorized and they did not want to violate immigration laws by employing an undocumented worker." It is far from clear that the intent underlying those immigration laws was to induce employers to utilize unpaid immigrant labor in lieu of paid employees. It is also difficult to imagine that Congress omitted a

specific reference to salaried employment in order to specially accommodate undocumented aliens such as the beneficiary.

Counsel states that "the Church provided extensive evidence that [the beneficiary] was engaging in these services on a full-time basis and receiving compensation in terms of room and board, a car and clothing." Counsel does not identify this "extensive evidence," which appears to consist of a letter from a church official. This letter is a claim, rather than "extensive evidence" to support that 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 petitioner does not relieve itself of its burden of proof simply by identifying third parties, with the implication being that the Bureau ought to contact them for further verification.

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 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.