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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: LIN 01 207 52191 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, 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 and church planter. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor and church planter immediately preceding the filing date of the petition.

On appeal, the petitioner argues that the beneficiary continuously worked as a minister, either with or without compensation.

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, "[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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination." 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 21, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor for two years prior to that date.

According to a letter from Rev. [redacted] the beneficiary performed "the duties of a pastor" in Quezon City, Philippines, and was paid a monthly salary from July 1997 until his departure for the United States. The beneficiary entered the U.S. on December 11, 2000. [redacted] senior pastor of the petitioning church, states:

> From December 11, 2000 to March 7, 2001, [the beneficiary] served as a pastor . . . doing a [sic] volunteer professional work for [the petitioner] without compensation. . . . These responsibilities were done voluntarily on a full-time basis. Our church provided the food, accommodations, and travel arrangements.

Subsequent to the above period, the beneficiary held an R-1 nonimmigrant visa and received "$2,500 per month including housing and medical insurance."

The director denied the petition, stating "[i]t is not reasonable to assume that the petitioning church, or any employer, could place the same responsibilities . . . on an unpaid volunteer as it could on a salaried employee. For this reason, the Service [now the Bureau] holds that volunteer activities do not constitute qualifying work experience in an employment-based visa petition." The director concluded "because the beneficiary's work experience was not salaried employment for the entire two year period it does not satisfy the two years of continuous employment required by the regulations and this petition cannot be approved."

On appeal, Rev [redacted] states that the beneficiary "did not cease his duties and responsibilities" during his period of volunteer work, and thus worked continuously "[a]s a minister, compensated

or not." The petitioner submits a letter from [redacted] director of missions for Pikes Peak Baptist Association. Mr [redacted] states:

> In our Southern Baptist ecclesiastical system we have many volunteer pastors of smaller churches. In Pikes Peak Baptist Association 36% of our churches have either volunteer or bi-vocational pastors. We expect our volunteer pastors to abide by the same standards and responsibilities as paid pastors.

An e-mail message from [redacted] Director of the Church Planting Division of the Colorado Baptist General Convention, states that 36% of the Pikes Peak pastors (17 out of 47) "are bivocational," working "part time in ministry." Given Ms [redacted] figures, Mr [redacted] letter is somewhat misleading. The 36% figure which, according to Mr [redacted] refers to "either volunteer or bi-vocational pastors," in fact pertains only to "bi-vocational" (part-time) pastors. Mr. [redacted] letter, taken together with Ms [redacted] message, indicates that there are no volunteer pastors in the Pikes Peak area. Otherwise, the total percentage of volunteers plus bi-vocational pastors would have to be higher than the percentage of bi-vocational pastors alone. Ms [redacted] message does not state that the denomination employs any unpaid volunteer pastors at all. Part-time or "bi-vocational" pastors cannot qualify for the visa classification sought because, by law, the alien must be employed solely as a minister.

[redacted] message provides statewide figures as well. In all of Colorado, the denomination has 248 pastors, 116 of whom (47%) are part-time pastors with other jobs. By area, the percentage of part-time pastors ranges from 35% in Denver (28 out of 80) to 89% in Harvest Plains (8 out of 9). Thus, the record shows that nearly half of the denomination's pastors in Colorado are bi-vocational, working outside the ministry, and that the beneficiary received minimal compensation for his work as a pastor for several months. On appeal, when discussing the denomination's substantial percentage of bi-vocational pastors, the petitioner does not deny that the beneficiary was (or indeed is) among the many pastors holding more than one occupation. Rev. [redacted] assertion that the beneficiary "performed these duties 24 hours a day" is clearly a figurative rather than a literal statement, because no one performs occupational duties while asleep. Rev. [redacted] goes on to generalize this statement to all members of the clergy: "[a]s ministers serving the living God, compensated or not, we are expected to perform our duties, 24 hours a day, far beyond the expectations of man or woman." This statement, presumably, applies equally to full-time clergy and bi-vocational pastors, and thus it is not tantamount to a denial of outside employment.

Re [redacted] asserts that "any member of the clergy having a religious vocation or occupation is not dependent on compensation but on a higher calling from God." While Rev. [redacted] assertion may be true as regards the personal motivation of clergy members, it remains that all human beings have basic material needs which cannot be met simply by feeling a sense of divine calling. If a religious worker receives no salary for church work, the assumption is that he/she must 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 regulation at 8 C.F.R. § 204.5(m)(4) states that the petitioner may be required to submit further evidence "[i]n doubtful cases." In this instance, doubt arises when a pastor works largely without compensation for a denomination in which nearly half of its pastors work for the church part-time while also holding secular jobs. The record contains no first-hand, contemporaneous evidence regarding the beneficiary's activities or his (at times minimal) compensation during the qualifying two-year period, and the petitioner has never expressly indicated that the ministry was the beneficiary's sole activity during the relevant period. General aphorisms about what is expected of ministers cannot suffice, when the petitioner has shown that these expectations do not preclude outside employment.

Furthermore, the beneficiary's duties have changed during the two-year qualifying period. According to Rev. [redacted] "[f]rom December 11, 2000 to March 7, 2001 [the beneficiary] served as a pastor," and "has been assigned to do mission work as a church planter . . . from March 8, 2001." The beneficiary evidently did not continuously perform the duties of a church planter throughout the two-year period. Rev. [redacted] has specified that, since March 8, 2001, the beneficiary has worked from 9:00 a.m. to 5:00 p.m. Sunday through Thursday, and from 2:00 p.m. to 6:00 p.m. on Saturday, but the petitioner has offered no comparable breakdown of the beneficiary's volunteer work from December 11, 2000 to March 7, 2001.

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.

For the above reasons, the petitioner has failed to establish persuasively that the beneficiary has been, and will continue to be, solely engaged in the vocation of a minister as required by the statute and regulations.

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.