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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] 27 2003

File: WAC 01 218 50862 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: 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 Service 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 immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is the Western Prelacy of the Armenian Apostolic Church of America. It seeks classification the beneficiary as a 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), in order to employ him as a minister.

The director denied the petition, finding that the beneficiary's volunteer work with the petitioner was insufficient to satisfy the requirement that he had been continuously employed as a minister for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submits a brief and asserts that there have been no interruptions in the beneficiary's work in the same capacity as the proffered position, except for a four-month hiatus after he entered the United States in December 2000. Counsel also states that the petitioner would have had to violate U.S. law if it had paid the beneficiary for his services.

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 petitioner in this matter is a prelacy[1] of the Armenian Apostolic Church. The beneficiary is a native and citizen of Iran. The petitioner submitted evidence that it has the appropriate tax-exempt status. The beneficiary entered the United States as a nonimmigrant visitor for pleasure (B-2) on December 8, 2000.

At issue in this proceeding is whether the beneficiary had been continuously carrying on as a minister for the two years preceding filing.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> All three types of 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.

The petition was filed on May 1, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on as a minister since at least May 1, 1999.

On appeal, the petitioner submitted a letter dated January 26, 2002 from an archbishop of the Armenian Prelacy of Isfahan informing the beneficiary that his request to be released from employment as a priest at the Diocese of the Armenians in Isfahan was granted. The record of proceeding also contains a letter from a representative of the petitioner that states:

> [The beneficiary] has served as the Parish Priest of the St. Nicholas Armenian Apostolic Church, under the jurisdiction of the Diocese of the Armenians in Iran and India . . . continuously from September 17, 1989 until he entered the United States as a visitor on December 8, 2000.
>
> From December 8, 2000, the date of his entry to the U.S. Rev. Father [redacted] has not received any monetary remuneration in the U.S. After a period of four months vacation and visit in the U.S., he began *volunteering* his services as a Priest/Minster of Religion of the Armenian Apostolic Church. Since April of 2001 he has been, on a regular and continuous basis, volunteering his services performing the above mentioned specific job duties under the supervision of the undersigned Prelate of the Western U.S. at various churches under our jurisdiction. The Western Prelacy provides him with transportation means and expenses only. It is our

[1] Church government administered by prelates (high-ranking ecclesiastics).

> understanding that [the beneficiary], his wife and daughter are financially supported by their immediate relatives.

Emphasis added.

The director concluded that a claim of voluntary service to one's church was insufficient to satisfy the requirement of having been continuously engaged in a religious occupation. The AAO concurs.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. The regulations are silent on the question of volunteer work satisfying the requirement. The regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations and ministers. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines a minister, in contrast, as an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. *Id.* Religious workers employed in the capacity of a minister or as one in a religious occupation are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, or as a minister, the job offer must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. *See* 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of persons seeking to engage in a religious occupation or as a minister, the prior experience must have been continuous salaried employment in order to qualify as well.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.