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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-01-198-52327 Office: Nebraska Service Center Date: MAY 29 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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 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 immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a non-profit religious organization. It seeks classification of 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 Director of Youth Ministry at an annual salary of $24,000.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had had two years of continuous experience in a religious occupation, or that the organization had demonstrated the ability to pay the proffered wage.

On appeal, counsel for the petitioner submitted a written statement and additional documentation. Counsel argued that there is sufficient evidence now contained in the record to demonstrate that the eligibility requirements have been satisfied.

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 charitable religious organization. The beneficiary is described as a native and citizen of Jamaica who was last admitted to the United States on June 6, 2000.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

A petitioner must demonstrate its ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2). On appeal, the petitioner in this matter submitted an audited financial statement for the salvation Army for the years 1999 and 2000. This document satisfies the regulatory requirement demonstrating the petitioner's ability to pay the proffered wage. The petitioner has satisfied the documentary requirement of this provision and has therefore, overcome this portion of the director's objections.

The remaining issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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 June 13, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least June 13, 1999.

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 the filing of the petition. The regulations are silent on the question of part-time or volunteer work satisfying this requirement.

The pertinent 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. 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 lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons 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, the job offer for a lay employee of a religious organization 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 lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, the Bureau must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. Nor is there any means for the Bureau to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For all these reasons, the Bureau holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

In this case, the petitioner submitted a letter from the Divisional Secretary for the northern division of the Salvation Army stating, in pertinent part, that:

> This will confirm that [the beneficiary] has been employed, full-time, as the Director of Youth Ministry at the Salvation Army, Parkview Corps (church) and Community Center from February 2001 through the present date (March 4, 2002, date of letter).

> From June 2000 through January 2001, he served in a voluntary capacity at The Salvation Army's Silver Lake Camp and Conference Center.

On review, counsel states on appeal, that the beneficiary worked in youth ministries with the Salvation Army in Jamaica for more than a two year period during 1996, 1998 and 1999. However, from the evidence submitted it cannot be concluded that the beneficiary was continuously carrying on a religious occupation with the Salvation Army from at least June 13, 1999 to June 13, 2001.

For the reasons noted above, the beneficiary's claimed volunteer work with the petitioning United States church from June 2000 to January 2001 is not considered to constitute engagement in a religious occupation.

Furthermore, the petitioner provided no proof of the date of the beneficiary's entry into the United States or his means of financial support in this country or in Jamaica. Absent a detailed description of the beneficiary's employment history during the two-year period, supported by corroborating documentation such as travel documents and tax documents, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

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.