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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: VERMONT SERVICE CENTER

Date: SEP - 2 2003

IN RE: Petitioner: [Redacted]
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: SELF-REPRESENTED

PUBLIC COPY

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 of the Vermont Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an evangelical pentecostal church. 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 her as adjutant pastor.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously carrying on a full-time salaried religious occupation for the two-year period immediately preceding the filing date of the petition.

On appeal, the petitioner states that the beneficiary has more than 12 years of experience as a minister. In support of this statement, the petitioner submits documents relating to the beneficiary's experience as a minister in the Dominican Republic.

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 issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a full-time salaried religious occupation for the two-year period immediately preceding the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(m)(1):

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 April 18, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing in the capacity of adjutant pastor since at least April 18, 1999.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. 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 fulltime student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

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. 612 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

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 fulltime 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 fulltime and salaried. To find otherwise would be outside the intent of Congress.

In this case, the petitioner has submitted a certificate from the Seminario Teologico Pentecostal, Inc., Puerto Plata, Dominican Republic, reflecting that the beneficiary completed a four-year course of studies in pastoral theology on June 24, 1990. The record also contains a certificate showing that the beneficiary was ordained as a minister by the Church of God of the True Grapevine on December 12, 1992. According to an affidavit from Rev. Pedro Antonio Moncion, National Overseer of the Church of God of the True Grapevine, the beneficiary began her ministry in 1985 when she was named as assistant pastor to the petitioner's sister church in Loma Del Cochero, San Pedro de Macoris in the Dominican Republic. She served in that capacity until 1988. From 1988 to 1996 she served as pastor of a sister church in Sonador de Yarda in the Dominican Republic. Reverend Moncion stated that the beneficiary subsequently served as pastor at another church located in San Pedro de Macoris from 1996 to an unspecified date in 2001, and was in fact still pastor of that church as of February 28, 2001, the date of Rev. Moncion's affidavit. Reverend Moncion provides no information as to whether the beneficiary's service as a minister in the Dominican Republic during the period from April 18, 1999 to April 18, 2001 was as a full-time salaried employee of that church. In fact, Rev. Moncion states that ministers of the denomination are supported by a system of tithes and love offerings from the church's members.

Reverend Moncion's claim that the beneficiary served as pastor at a church in Santo Domingo, Dominican Republic during the period from 1996 to 2001 appears to be contradicted by photocopies of the beneficiary's Dominican Republic passport and Form I-94 Arrival/Departure Record. According to the beneficiary's Form I-94, she was admitted to the United States on October 9, 2000 as a nonimmigrant B-2 visitor for pleasure, with stay authorized to April 8, 2001. There is no Dominican Republic entry stamp in the beneficiary's passport to show that, since her arrival in the United States on October 9, 2000, she ever departed the United States and returned to the Dominican Republic.

On appeal, Reverend Guzman submits copies of the beneficiary's

federal and New York State income tax forms for the year 2001. It is noted, however, that these forms are all dated after the expiration of the 2001 federal income tax filing period on April 15, 2002. The petitioner submits a notice dated April 29, 2002, from the U. S. Internal Revenue Service (IRS) acknowledging receipt of the beneficiary's Form W-7 Application for IRS Individual Taxpayer Identification Number and assigning her such number. The beneficiary apparently signed her federal income tax return forms on May 5, 2002. She claimed an annual business income of \$3600 as a self-employed individual.

None of these tax documents were filed by the beneficiary until after the director issued a Form I-797 Request for Evidence on February 1, 2002, instructing the petitioner to provide evidence to show that the beneficiary was a full-time salaried employee during the two-year qualifying period. It would appear that the beneficiary may have filed her federal and New York State income tax forms in an attempt to document the claim that she was a salaried employee of the church during the requisite two-year period. It is not clear why Reverend Moncion would state that the beneficiary served a church in the Dominican Republic from 1996 to 2001 when the beneficiary has apparently been in the United States since October 9, 2000. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Furthermore, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Even assuming *arguendo* that the beneficiary served as pastor at the petitioning church during the period from October 9, 2000 to April 18, 2001, the beneficiary's claimed employment still would not constitute full-time salaried employment since the beneficiary was purportedly a self-employed individual during the qualifying period. The record contains no evidence to show that the beneficiary was a full-time salaried employee of the church in the Dominican Republic or the petitioning church in the United States during the two-year qualifying period.

Beyond the decision of the director, the petitioner failed to demonstrate its ability to pay the proffered wage. See 8 C.F.R. § 204.5(g)(2). Since the appeal will be dismissed on the grounds discussed above, this issue will not be explored further.

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.

