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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 0 4 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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

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 employment-based immigrant visa petition was denied by the Director, Vermont 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 minister. The director determined that the petitioner had not established that the beneficiary qualifies for classification as a minister, or that the beneficiary's position requires any specialized religious training or education.

On appeal, the petitioner argues that such training is necessary for workers in a religious occupation, but not in the vocation of a minister.

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)(3)(ii)(B) requires the petitioner to submit evidence to show "[t]hat, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested." 8 C.F.R. § 204.5(m)(4) requires the petitioner to "state how the

alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration)." 8 C.F.R. § 204.5(m)(2) offers the following relevant definitions:

> *Minister* means 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. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.
>
> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Rev. Dr. Sidley Mullings, senior pastor of the petitioning church, states that the church has "no salaried religious or non-religious employees at this time," but that "this church found it only prudent to establish a permanent, salaried, full-time pastoral staff to replace the 'revolving door' system that was once common but no longer effective." To that end, the petitioner proposes to employ the beneficiary as a minister. Rev. Mullings states that the beneficiary "has been a Licensed Minister of the Gospel in the Pentecostal Denomination for the past seventeen years and Ordained Minister for the past eleven years . . . and has been performing his ministerial duties since April of 1994 at our church." Documents in the record confirm that the West Indies Pentecostal Assemblies issued the beneficiary's license to preach on June 12, 1983 (at which time the beneficiary was 18 years old), and that the First Community Church of God ordained the beneficiary as a minister on February 17, 1990. The ordination certificate indicates that the church that ordained the beneficiary "had full and sufficient opportunity for judging his gifts, and after satisfactory examination by us in regard to his Christian experience, call to the ministry and views of Bible doctrine."

Rev. Mullings' assertion that the church has "no salaried religious or non-religious employees" is inconsistent with a financial statement in the record, which reflects entries for "Pastor's Salary" and "Sexton's Salary." Rev. Mullings further asserts that, rather than a regular salary, "our religious workers are compensated in the form of 'Salaria' . . . [a] stipend, wages, or compensation for services." A ledger from September 1999 reflects "disbursements" in varying amounts to Rev. Mullings himself and various other individuals, but there is no mention of the beneficiary.

Rev. Mullings describes the beneficiary's duties:

> [The beneficiary's] duties include and will not be limited to the following: preaching sermons on an average of twice per week, teaching the Bible Doctrine

> and Spiritual Principles, preparing converts for Baptism and fellowship, as well as instructing/teaching new members, the structure and doctrine of the church. [The beneficiary] will also, continue to visit the sick and shut-in, in nursing homes, and hospitals, bless and dedicate new homes and apartment[s] acquired by members, when necessary, conduct and officiate at funeral services, when necessary. He will also supervise the accountability of moneys collected, supervise and coordinate the ministries of the church namely: Evangelism Ministry, Outreach Ministry and the Men's Ministry. He will also provide individual religious counseling to members of the congregation and community.

The director instructed the petitioner to submit evidence to show that the beneficiary's past and proposed future duties "require specific religious training beyond that of a dedicated and caring member of the religious organization." In response, the petitioner has submitted substantial background documentation which does not address the issue of what the requirements are to become a minister. Rev. Mullings states "[a]pproximately twenty-three years of religious training . . . set [the beneficiary] apart from a dedicated and caring member of this organization." At the time Rev. Mullings wrote this, the beneficiary was thirty-six years old. Rev. Mullings does not specify or document the training that the beneficiary began receiving at the age of thirteen beyond the usual religious education provided to young members of the petitioner's denomination. The knowledge that the beneficiary has accumulated as a member of the religious denomination does not set him apart from other long-standing members of the denomination, and exceptional devotion to one's faith is not tantamount to specialized training.

Rev. Mullings asserts that the beneficiary "has habitually worked in excess of forty hours" per week at the petitioning church since April 1994. Rev. Mullings states "[a]s [was] previously mentioned, the beneficiary shall continue to receive wages in the form of Salaria." This is not, however, what was previously mentioned. In his initial letter, Rev. Mullings stated that the church's employees have in the past received Salaria, but that this system had become unworkable and therefore "this church found it only prudent to establish a permanent, salaried, full-time pastoral staff." Rev. Mullings asserts that, because the petitioner is tax exempt, "there are no . . . Quarterly Withholding Statements." Whatever the status of the church, the individual employees are private citizens and therefore subject to paying income tax, whether that income is labeled "Salaria" as in Rev. Mullings' letters, or "salary" as reflected in the church's financial documents.

We note that because the aforementioned financial records say nothing about payments to the beneficiary, the record contains no evidence at all to establish the beneficiary's means of support during the two years prior to the April 12, 2001 filing of the petition.

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.

In denying the petition, the director stated that several of the beneficiary's duties "do not appear to require advanced religious training." The director also noted "if [the beneficiary] had been working a minister for 23 years, he would have begun when he was thirteen years old." The director concluded that the beneficiary's work does not qualify as a religious occupation.

On appeal, Rev. Mullings states that "the beneficiary's duties such as visitation, Bible studies and supervising Outreach programs . . . are considered Ministerial at [the petitioning church], and requires [sic] advanced religious training which [the beneficiary] posses[ses]." Rev. Mullings asserts "the minimum time prior to License and Ordination of church duty is ten years" along with "[i]ntense Bible studies . . . for a minimum of 40 hours weekly for nine months" and "[c]ontinuing education in counseling, drugs, Outreach, social ills, poverty and crimes."

If, as Rev. Mullings claims, "ten years" of "church duty" is necessary "prior to License," then the beneficiary must have begun this duty no later than June 12, 1973, which is ten years before the

beneficiary received his license. On June 12, 1973, the beneficiary was eight years old. Ten years before his February 1990 ordination, the beneficiary was fifteen years old.

Rev. Mullings asserts that "there are no transcripts" to prove that the above training took place, because "all courses . . . were conducted at local district churches rather than a seminary or theological school." Rev. Mullings asserts that seminary training "is required for religious professionals not ministers," and that the beneficiary's job duties fully conform to the regulatory definition of a minister at 8 C.F.R. § 204.5(m)(2).

Case law does not support Rev. Mullings' assertion that an ordained minister need not show advanced training. In *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978), the Board of Immigration Appeals found that an alien claiming to be an ordained minister did not qualify for the classification because the ordination was "not [based] on any theological training or education" and because there was no evidence that the alien had actually participated in the performance of sacraments, consistent with the generally understood definition of "minister." The alien in that case offered an argument similar to this petitioner's argument, and the Board offered the following response:

> The respondent argues that the fact that she is recognized as an ordained minister by a recognized religious organization should be the end of the inquiry and cannot be challenged. We do not agree that the issuance of a piece of paper entitled "certification of ordination" by a religious organization should be conclusive as to who qualifies as a minister for immigration purposes.

Id. at 610. Because the beneficiary's ordination appears to have been contingent on little more than "Christian experience" and a "call to the ministry," and because there is no evidence that the beneficiary has performed the full range of duties reserved for authorized clergy in his denomination, the relevant facts in this proceeding appear to mirror those factors in *Matter of Rhee*. Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, *supra*.

For the above reasons, we find that the director properly found that the petitioner has failed to demonstrate that the beneficiary has been, and will continue to be, employed as a minister as the law contemplates that term.

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.