



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



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File: EAC-98-078-51156 Office: Vermont Service Center

Date:

MAY 17 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



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invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

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

The petitioner is a 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), to serve as an education director. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

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, 2000, 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, 2000, 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 beneficiary is a twenty-six-year-old single female native and citizen of Korea. The petitioner did not indicate when, or in what

manner, the beneficiary entered the United States. The petitioner did indicate that the beneficiary had never worked in the United States without permission.

At issue in the director's decision is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

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.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In its letter dated June 5, 1998, the petitioner stated that:

In order to perform the duties of the Education Director as a professional religious worker, the incumbent must have either a Bachelors degree in Theology or have completed a training course with the duration 320 hours

and have at least three years of experience in directing and teaching bible study . . . the job duties are traditional religious functions that are not performed routinely by other members . . .

[The beneficiary] has graduated from Francis Lewis High School on 1991 and went on to be educated in the Calvinistic Theological Seminary of New York and earned a Bachelors in Theology on May 18, 1998. Currently she is studying towards a Masters in Divinity at the aforementioned institution.

In a letter dated May 27, 1998, the petitioner stated that the beneficiary's duties will "primarily consist of planning, directing and implementing religious educational programs/bible study, as well as other religious activities for the Kindergardeners [sic]." The petitioner submitted a photocopy of its By-Laws. According to this undated document, an education director:

Needs to have a seminary degree or a B.A. in management, must be very knowledgeable with the bible, be very personable and demonstrate great deal of leadership through past experiences and references. Must receive consistory approval. Responsible for the instructors and members of the specific division as well as the specific functions.

On appeal, counsel argues that the evidence submitted by the petitioner demonstrates that the prospective occupation is a religious occupation. Counsel's argument is not persuasive. There is no evidence that a theological education or any formal religious training is necessary to perform the duties of an education director. While the petitioner stated that an education director must have a degree in Theology, the By-Laws stated that a candidate for the position must have a seminary degree or a degree in management. The petitioner did not explain this discrepancy. Furthermore, it is not clear why the two distinctive types of degrees listed in the By-Laws are apparently interchangeable prerequisites for the position of education director. Moreover, the petitioner has not established that the duties could not be carried out by any member of the congregation who is "knowledgeable with the bible [and] personable." Accordingly, the petitioner has not established that the prospective occupation is a religious occupation.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary has two years of continuous religious work experience as required at 8 C.F.R. 204.5(m)(2). Also, the petitioner has failed to establish that it has the ability to pay the proffered wage as required at 8 C.F.R.

204.5(g)(2). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

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.

ORDER: The appeal is dismissed.