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U.S. Department of Justice  
Immigration and Naturalization Service

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



Public Copy

File: EAC-98-025-50472

Office: Vermont Service Center

Date: AUG 1 2001

IN RE: Petitioner:  
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)

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

IN BEHALF OF PETITIONER:



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

*Myra L. Rosenberg*  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. The director granted a motion to reopen the proceeding and affirmed the denial. 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), in order to employ him as a math and science tutor for youth at an annual salary of \$16,200.

The director denied the petition finding that the petitioner failed to establish that the church was a qualifying tax exempt religious organization, that the proposed position was a qualifying religious occupation for the purpose of special immigrant classification, that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding filing of the petition, or that the church had the ability to pay the proffered wage.

On appeal, the petitioner submitted additional statements and letters attesting to the beneficiary's character.

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 church purportedly affiliated with a Baptist denomination. The size of its congregation was not indicated. The beneficiary is a native and citizen of Cameroon who was said to have last been admitted to the United States in 1985 as an F-1 student. The record reflects that the beneficiary remained beyond his authorized stay and has resided in the United States since such time in an unlawful status.

The petition was filed without benefit of counsel and the petitioner is evidently unfamiliar with the requirements for special immigrant classification. In the interest of clarity, the appeal will be reviewed on its merits.

In order to establish eligibility for special immigrant classification, a petitioner bears the burden to satisfy each of the eligibility requirements set forth in the regulations.

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

To satisfy this requirement, a petitioning church can submit proof either that it is tax exempt as part of a group exemption granted to a denomination, that it is independently recognized as tax exempt by the Internal Revenue Service (IRS), or submit the documentation that would be required by the IRS to establish eligibility for tax exempt recognition. The documentation required by the IRS to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, and a copy of the corporate organizing instrument with a qualifying dissolution clause.

The petitioner has not submitted any of the necessary documentation to establish that it is a qualifying religious organization. For this reason, the petition may not be approved.

The next issue is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

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(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

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

*Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

*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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an

activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. 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 and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. 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.

The petitioner's original statement with the petition form was that it was sponsoring the beneficiary as a reward for his community service efforts. The petitioner revised this statement with an offer of employment as an "outreach worker" at a salary of \$16,200 per year. The duties of the position were described as assisting youth in drug diversion programs and serving as a math and science tutor.

As noted above, not all employees of a religious institutions are considered to be engaged in a religious occupation for the purpose of special immigrant classification. A person employed by a church to perform various secular "youth outreach" activities, even though employed by a church, is considered to be engaged in a secular occupation, not a religious occupation. For this additional reason, the petition may not be approved.

The petitioner must also demonstrate that a qualifying job offer has been tendered.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely

dependent on supplemental employment or the solicitation of funds for support.

In this case, in the course of the proceedings with the center director, the petitioner has widely altered the terms of remuneration. Such inconsistencies raise a significant concern of whether the job offer is bona fide. 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. It is incumbent upon 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 (BIA 1988). For this reason as well, the petition may not be approved.

The next issue is whether the petitioner has established that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

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 October 23, 1997. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least October 23, 1995.

On review, the petitioner has failed to provide a comprehensive description of the beneficiary's employment history since his entry into the United States and during the two-year qualifying period. There is no claim that he has ever been employed by a religious organization in a religious occupation. As noted by the director, the fact that the beneficiary may have been employed by a church or a parochial school as a math and science tutor does not constitute employment in a religious occupation. For this reason as well, the petition may not be approved.

The final issue is the petitioner's ability to pay the proffered wage.

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

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at

the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must submit evidence of its ability to pay the amount of the wage ultimately offered in the form of annual reports, federal tax returns, or audited financial statements. The petitioner has not satisfied this documentary requirement. For this reason as well, the petition may not be approved.

The denial of this petition is without prejudice to the beneficiary pursuing any other immigration benefit for which he may be eligible.

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

**ORDER:** The appeal is dismissed.