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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

AUG 09 2001

File: WAC-00-082-51919 Office: California Service Center

Date:

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to  
prevent clearly unwarranted  
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

for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

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

The petitioner is described as 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 lay evangelist.

The director denied the petition determining that the petitioner failed to submit the required documentation to establish that it is a qualifying religious organization exempt from, or eligible for exemption from, taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations and failed to establish that the beneficiary had had the requisite two years of experience in a religious occupation.

On appeal, an official of the petitioner stated that the church has been operating for more than 50 years and is not required to get formal tax exempt recognition from the Internal Revenue Service. The official further stated that the beneficiary has served the church voluntarily as an evangelist for more than three years, while supporting himself with secular employment, and further stated that they do not understand why such experience would not be considered qualifying for special immigrant classification.

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 is described as an independent Christian church. The petitioner did not provide an estimate of the size of its congregation or how many persons it employs. The beneficiary is described as a native and citizen of Nigeria who last entered the United States in February 1981, in an undisclosed manner. The record indicates that the beneficiary has resided in the United States in an unlawful status since entry.

The first issue is the requirement that the petitioner establish that it is a qualifying religious organization as defined in these proceedings.

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).

Every application or petition filed must be completed as applicable and filed with any initial evidence required by regulation or specified in the instructions on the form. 8 C.F.R. 103.2(a)(1). In a special immigrant religious worker petition, the initial evidence includes evidence that the United States employer is exempt from, or eligible for exemption from, taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. 8 C.F.R. 204.5(m)(3)(i). The petitioner did not furnish such documentation at the time of filing.

The petitioner is correct in stating that the Internal Revenue Service ("IRS") does not require all churches to obtain formal tax exempt recognition. This Service therefore provides that a petitioner in special immigrant proceedings may submit in the

alternate such evidence as would be required by the IRS. 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.

The petitioner's own testimony regarding its status as a tax exempt church is insufficient to satisfy the documentary requirement of the regulations. In this case, the petitioner submitted a copy of its articles of incorporation, but failed to submit a completed IRS Form 1023 and Schedule A. Absent such required documentation, the petition may not be approved.

The next issue is whether the beneficiary's claimed past voluntary participation in church activities satisfied the requirement of having had two years of experience in a religious occupation.

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)(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 January 24, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious occupation at least

since January 24, 1998.

In this case, the petitioner asserted that the beneficiary had donated voluntary services to the church for more than three years and that the participation had averaged more than 35 hours per week. It was also stated that the beneficiary has supported himself financially with secular employment. The record reveals some documentation reflecting that the beneficiary is self-employed as a T-shirt vendor. The petitioner argued that the claimed voluntary services donated to the church should satisfy the requirement that the beneficiary had had two years of continuous experience in a religious occupation.

The petitioner's argument is not persuasive. The statute requires that the alien have been "carrying on such vocation, professional work, or other work continuously" for the two years prior to filing. Section 101(a)(27)(C)(iii) of the Act. The regulations are silent on the question of part-time or volunteer work satisfying the requirement. This is 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. The regulation defines religious occupations, in contrast, in general terms as an activity related to a traditional religious function. *Id.* 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 full-time 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 prior experience must have been full-time salaried employment in order to qualify as well. Accordingly, volunteer activities does not constitute qualifying work experience in a religious occupation within the meaning of section 101(a)(27)(C) of the Act.

Beyond the discussion in the director's decision, the petitioner has failed to demonstrate eligibility on other grounds. The petitioner has failed to establish that it has the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2); that the proposed position constitutes a qualifying religious occupation pursuant to 8 C.F.R. 204.5(m)(2); that the petitioner has tendered a qualifying job offer pursuant to 8 C.F.R. 204.5(m)(4); or that the beneficiary is qualified to perform a religious occupation pursuant to 8 C.F.R. 204.5(m)(3)(ii)(D). As the appeal will be dismissed on the grounds 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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.