



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-00-066-54470

Office: Vermont Service Center

Date: AUG 23 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)

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

Myra L. Rose
for Robert P. Wiemann, Acting 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 described as a church. It seeks classification of the beneficiary as a special immigrant minister 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 an assistant pastor.

The center director denied the petition determining that the list of duties of the proposed position submitted by the petitioner had not been shown to constitute a qualifying religious occupation.

On appeal, the petitioner argued that the beneficiary is a minister and that the proposed duties can only be performed by 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 petitioner is described as a church with a congregation of 275 members that is affiliated with a denomination of the same name.

standards. The petitioner furnished a "certificate of ordination" naming the beneficiary, but did provide a description of or proof of the beneficiary's theological education in order to qualify her for ordination by the denomination. Furthermore, the ordination certificate was awarded by the petitioning church. Ordination is usually awarded by an authority of the governing body of a denomination, not by an individual church. Simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. Matter of Rhee, 16 I&N Dec. 607 (BIA 1978). For these reasons, the petitioner has not established that the beneficiary qualifies for classification as a special immigrant minister.

It must also be determined whether the beneficiary has the requisite two years of experience as a minister.

The petition was filed on December 20, 1998. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the vocation of a minister since at least December 20, 1996.

Regarding the prior work experience, the petitioner claimed that the beneficiary has "served" two affiliated churches since August 1996. This claim is not sufficient to satisfy the petitioner's burden of proof.

On review of the record, it is concluded that the petitioner has failed to establish that the beneficiary has the requisite experience as a minister. First, as noted above, the petitioner has not established that the beneficiary is a qualified minister for the purposes of this proceeding.

Second, the petitioner has not furnished a detailed description of the beneficiary's employment or endeavors in the United States. The record does not contain any indication of the beneficiary's occupation, or means of financial support, since entry into the United States in 1982. Absent a comprehensive description of the beneficiary's employment history, supported by corroborating evidence such as tax records, the Service is unable to determine that the beneficiary had been engaged in any particular occupation, religious or otherwise, for the two-year period.

Third, in the case of special immigrant ministers, it was held in Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986) that the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought. The petitioner made no claim and submitted no evidence that the beneficiary was solely carrying on the vocation of a minister since at least December 1996.

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 is a qualifying 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 pursuant to 8 C.F.R. 204.5(m)(3)(i); that it has the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2); or that the beneficiary is qualified to perform a religious vocation or 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, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.