



U.S. Department of Justice

Immigration and Naturalization Service

MA

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



PUBLIC COPY

File: EAC-98-059-51374 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:

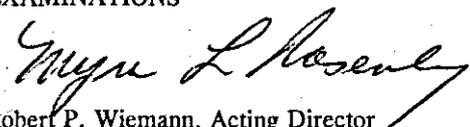
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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

  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center, and 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 "missionary/evangelist" under unstated terms of remuneration.

The director denied the petition finding that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification, that the beneficiary had had two years of continuous experience in a religious occupation, or that a qualifying job offer had been tendered.

On appeal, a representative of the petitioner submitted additional documentation. The documentation included a letter from the church's general secretary stating that the beneficiary is an ordained minister and that the church will compensate him at the rate of \$2,000 per month.

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 an independent church recognized with the appropriate tax exempt status. The beneficiary is a native and citizen of the Philippines who was last admitted to the United States as a B-2 visitor on July 18, 1992. The record reflects he was granted a change of classification on April 1, 1993 to F-1 classification as a student. His current immigration status is unknown.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements. The statute provides for three distinct classifications of religious workers: ministers of religion, professional workers, and other lay workers. Each has different eligibility requirements.

The petition was filed seeking classification of the beneficiary as a lay religious worker, an "evangelist/missionary," and the center director adjudicated the petition under the regulatory standards for a lay worker.

On appeal, the petitioner advances the new claim that the beneficiary is an ordained minister and that it seeks to employ him in that capacity. This represents a material change to the petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. Matter of Katigbak, 14 I&N Dec. 45 (Comm. 1971); See also Matter of Izumii, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998).

The petitioner's revised claims for special immigrant classification cannot be accepted as the basis of an appeal. If the petitioner wishes to pursue this claim, it must file a new petition. As the petitioner has failed to address the grounds for denial of the petition as stated in the notice of decision, the appeal will be dismissed.

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.