



U.S. Department of Justice

Immigration and Naturalization Service

CI

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



PUBLIC COPY

File: [Redacted]

Office: Nebraska 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:

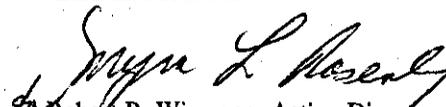
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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, Nebraska 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), in order to employ her as a "Sabbath School Teacher" at a salary of \$1,400 per month, or \$16,800 per year.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had had at least two years of continuous experience in the position as required. The director noted that the claim that the beneficiary donated voluntary services to the church would not constitute the requisite experience in a religious occupation.

On appeal, counsel for the petitioner submitted a written brief arguing that the beneficiary had been employed as a teacher by the church since February 16, 1998. Counsel also stated that he was enclosing an additional letter from the pastor of the church and the beneficiary's tax returns to support the claim. It is noted, however, that the two exhibits referred to by counsel were not submitted with the brief. Counsel did enclose copies of other documents that were already in the record.

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 affiliated with the General Conference of Seventh-Day Adventists. The beneficiary is described as a native and citizen of Romania. The date and manner of her entry into the United States were not disclosed. The record does contain a notice of approval of R-1 temporary worker classification for the beneficiary that is valid from March 5, 1998 to February 25, 2001.

The first issue in this proceeding is whether the petitioner has established that the two-year work experience requirement has been satisfied.

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 February 16, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in the proffered position since at least February 16, 1998.

Counsel argued on appeal that the petitioner submitted a letter from the pastor of the church attesting to the past employment and that that is all the evidence that is required by the regulations. The argument is not persuasive.

First, the petitioner submitted a letter from Rev. Cazan dated July 31, 2000 stating that the beneficiary has been a member of the church since June 22, 1986 and "served as a teacher" since March 8, 1998. A second letter of the same date was submitted stating that the beneficiary worked as a Sabbath School Teacher on a volunteer basis from May 15, 1997 to March 7, 1998.

The letters do not state that the beneficiary was employed by the church and do not provide any description of the duties performed or the time spent performing the duties. As noted by the director, the Service interprets its own regulations to mean that the two years of qualifying experience must be in a full-time paid position engaged in as the alien's occupation. The petitioner did not advance a claim that the beneficiary was continuously employed by the church since at least February 1998.

Second, the petitioner provided no indication of the date and manner of the beneficiary's entry into the United States or her means of financial support in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as travel documents and tax documents, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation during the two-year qualifying period. Contrary to counsel's suggestion, a letter from an official of the individual petitioning church is a required document to support the petition, but is not sufficient to satisfy the burden of proof standing alone.

Third, counsel's reference to exhibits supporting his appellate brief, and the fact that such exhibits were not, in fact, submitted, raises a significant question of the credibility of the claims made on appeal.

Finally, even considering the statements of Pastor Cazan, his claim is that the beneficiary "worked" for the church only since March 8, 1998 which does not encompass the minimum two-year period immediately preceding the filing of the petition.

In addition, the petitioner must show that the alleged experience was in a qualifying 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 proposed position in this matter is "Sabbath School teacher" in the church's "children's department." The petitioner did not provide a description of the duties or the work schedule for the position. A typical Sunday school teacher presenting basic religious materials to children for a few hours on Sunday, even if paid, is a part-time position and would not be considered qualifying prior experience.

In addition, in this case the petitioner did not furnish any indication of the size of its congregation or the size of its "children's department." Nor did the petitioner indicate that it sponsored any type of full-time religious education program that employs full-time lay religious staff that could be considered engaged in a qualifying religious occupation. For example, workers in a church-sponsored day-care program would be considered to be engaged in a secular child-care occupation, rather than a religious occupation. Merely stating a title for a proposed position does not satisfy the petitioner's burden of proof. It is incumbent on the petitioner to provide a comprehensive description of the proposed position, supported by corroborating documentation, in order to credibly establish that the alien will be employed in a qualifying position. Absent such information, the Service is unable to reach a favorable determination.

There are additional deficiencies in the petition. A petitioner must establish that it is a qualifying religious organization as defined in these proceedings. 8 C.F.R. 204.5(m)(3) states, in part, that each petition for a religious worker must be accompanied by 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. The petitioner demonstrated that the General Conference of Seventh-Day Adventists has the appropriate group tax exemption, but did not provide verification from the denomination that the petitioning church is a member church included in that exemption.

A petitioner must establish its ability to pay the proffered wage. In this case, the proffered wage is \$16,800 per year. 8 C.F.R.

204.5(g)(2) requires that evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements. The petitioner did not submit this documentation to satisfy the requirement.

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.