



U.S. Department of Justice

Immigration and Naturalization Service

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



PUBLIC COPY

File: EAC-00-045-51439

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
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

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 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 him as a pastor at an annual salary of \$22,500.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years immediately preceding the filing of the petition as required.

On appeal, an individual identified as a "district" official of the petitioning church's denomination stated that the beneficiary has been a minister since his ordination in 1994 and that he has been voluntarily serving the petitioning church as a minister since his admission to the United States in June 1998. The official submitted additional documentation.

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 described as a church affiliated with a Christian denomination of the same name, the Christ Apostolic Church, that originated in Nigeria and that has affiliates in the United States. The petitioner did not indicate the size of its congregation or the length of time it has been operational, but stated that it has never had any paid employees. The beneficiary is a native and citizen of Nigeria who was last admitted to the United States on June 7, 1998 as a B-1 visitor with an authorized stay until September 6, 1998. The record reflects that the beneficiary has continued to reside in the United States since such time in an unlawful status. The petitioner asserted that the beneficiary graduated from a two-year program at a theological college in Nigeria in 1992 and was ordained as a minister in 1994. The petitioner asserted that the beneficiary served as a minister at a church in Nigeria since his ordination.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy several eligibility requirements.

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).

In addressing this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated July 8, 1994 rejecting its application for tax exempt recognition as incomplete.

Accordingly, there is no evidence that the individual petitioning church or the Christ Apostolic Church of U.S.A., Inc. denomination has the requisite tax exempt recognition under section 501(c)(3) of the Internal Revenue Code. Nor did the petitioner submit such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3). For this reason, the petition may not be approved.

A petitioner must also establish that the beneficiary is qualified

as a minister 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:

(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.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

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

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The petitioner asserted that the beneficiary was ordained as a minister of its denomination in 1994. The petitioner actually advanced inconsistent claims regarding the date of ordination referring in separate documents to dates in May and September of 1994. The petitioner submitted no evidence of this claim.

The evidence of record is insufficient to establish that the beneficiary is a qualified minister of the denomination. First, the petitioner has not explained the standards required to be recognized as a minister in the denomination or shown that the beneficiary has satisfied such standards.

Second, the petitioner did not submit a letter from an authorized official of the denomination verifying the denomination's recognition of his credentials. Merely going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The two statements from an official of the individual church and from the "district" organization have not been shown to be

authorized authorities of the denomination and cannot be accorded the necessary evidentiary weight. For this reason as well, the petition may not be approved.

A petitioner must also establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

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.

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 and must intend to be engaged solely in the work of a minister of religion.

The petition was filed on November 24, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least November 24, 1997.

In this case, an official of the petitioning church testified that the beneficiary had been a minister in Nigeria since his ordination and had served the petitioning church voluntarily since his admission in June 1988. The petitioner's own testimony is insufficient without corroborating documentation. See Matter of Treasure Craft of California, supra.

First, there is no contemporaneous documentation that the beneficiary was engaged in the vocation of a minister in Nigeria such as tax records or verifications from authorized officials of the denomination in that country.

Second, there is no contemporaneous documentation that the beneficiary has been continuously engaged as a minister in the United States. A general statement that the alien served the church on a voluntary basis is not sufficient to establish that he was continuously and solely carrying on the practice of his vocation.

Finally, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period or that he would be solely engaged as a minister with the small new church. It is noted that the beneficiary's passport lists his profession as "banking" which is inconsistent with a claim that he was solely carrying on the

vocation of a minister. 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.

A petitioner must also demonstrate its 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 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 annual reports, federal tax returns, or audited financial statements.

The petitioner submitted a bank statement showing a current balance of approximately \$5,000 and various other unidentified internal financial summaries as proof of the church's financial resources. These documents do not satisfy the regulatory requirement. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not established the ability to pay the proffered wage of \$22,500 per year. Nor has the petitioner established that the district organization is either willing or able to pay the proffered wage or that the affiant is authorized by the district organization to enter into an agreement to pay the alien's wage. For this reason as well, the petition may not be approved.

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.