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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

JUL 16 2001

File: EAC-98-269-50010 Office: VERMONT 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 APPLICANT:



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 E. 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 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 lay "educational evangelist."

The director denied the petition determining that the petitioner failed to establish that the proposed position is qualifying as a religious occupation for the purpose of special immigrant classification.

On appeal, counsel for the petitioner argued that the church's by-laws and the church's pastor both indicate that the proposed position requires religious training and that the duties of the position cannot be performed by any untrained member of the congregation.

Section 203(b)(4) of the Act provides classification as a special immigrant religious worker to a qualified alien 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 a church affiliated with the Presbyterian Church USA denomination. The petitioner did not provide an estimate of the size of its congregation, but claimed 1997 revenues of \$585,852 and a single employee, the pastor. The beneficiary is a native and citizen of Korea. The petitioner submitted documentation reflecting that the beneficiary completed a four-year course of study at a seminary in Korea in 1995 and has been employed as an educational evangelist in that country since her graduation. The petitioner indicated on the petition form that the beneficiary is married with two dependent children and resides in Korea.

At issue is whether the petitioner has established that the position of "educational evangelist" constitutes a religious occupation for the purposes of this proceeding.

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 statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In this case, the petitioner asserted that the position includes duties such as planning, organizing, and implementing "classes" and Bible study programs. The petitioner also asserted that formal theological education is required for the position.

The regulatory definition of what constitutes a lay religious occupation for the purpose of special immigrant classification is formulated in broad terms in order to accommodate the differing traditions of the various religious denominations. In interpreting its own regulation, the Service requires documentation that the proposed occupation on which the petition is based is traditionally a religious occupation of the particular denomination, that is that persons are habitually employed by members churches in that occupation and that there are some denominational standards for the position. The documentation submitted in support of the petition must be consistent and credible in order to satisfy the petitioner's burden of proof.

In this case, the petitioner has not stated whether it has ever employed an educational evangelist in its past or explained its decision to employ one at this time. The petitioner also did not explain whether the "educational" programs in which the alien beneficiary will be employed are currently in existence or will be created once the beneficiary is hired. There is no indication how many persons are served by such a program, where it operates, or the church's budget for the operation. In addition, the petitioner provided no description of its recruitment process or the means by which it choose to select the alien beneficiary from abroad. For example, there is no indication that the position was advertised or that other candidates were considered. Absent such basic information regarding the job underlying an employment-based immigrant visa petition, it cannot be concluded that the petitioner has satisfied its burden of proof. Merely stating that an alien has completed a course of study at a Bible college and that a church wishes to employ that individual, is not sufficient to establish the credibility of the job offer or establish that the proposed employment is a qualifying religious occupation within the meaning of section 203(b)(5) of the Act.

In addition, an individual church's by-laws or the hiring authority of an individual minister is not dispositive in demonstrating that a position is a traditional religious occupation of a denomination.

The petitioner failed to provide any information from an authority of the Presbyterian denomination to verify that it recognizes the position of lay educational evangelist and that such positions are traditionally permanent salaried positions of its member church's. While the petitioner furnished documentation of the beneficiary's religious training, it did not provide any documentation from denominational authorities regarding the basic qualifications for the position.

Based on the evidence furnished, it cannot be concluded that the petitioner has overcome the director's objection and established that the positions of "educational evangelist" at the petitioning church is a religious occupation for the purpose of special immigrant classification.

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.