

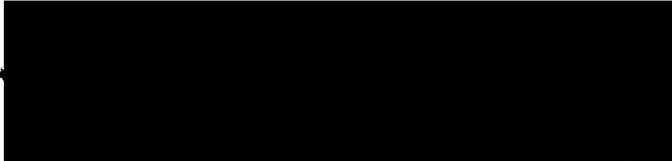


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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: WAC-99-059-50512

Office: California Service Center

Date: JUL 16 2001

IN RE: Petitioner: IGLESIA ADVENTISTA HISPANA DE LAS VEGAS  
Beneficiary: Emigdio INZUNZA

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 Myra J. Roseberry*  
Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, California 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 him as a Bible instructor. The director denied the petition finding that the beneficiary's volunteer work at the church did not satisfy the requirement that he have had at least two years of continuous work experience in a religious occupation during the period immediately preceding the filing date of the petition. The director also found that the petitioner failed to establish its ability to pay the proffered wage of \$20,000 per year.

On appeal, the petitioner argued that the beneficiary acted as a Bible instructor at their church on a full-time basis without compensation because he was not authorized for employment in the United States.

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 Seventh-Day Adventists denomination that is recognized as tax exempt through that denomination's group tax exemption. The beneficiary is a native and citizen of Mexico. It was stated that the beneficiary is the owner/operator of a business in Guadalajara, Mexico. In a letter dated May 14, 2000, it was claimed that the beneficiary also was employed as a Bible instructor by an affiliated church in [REDACTED] from February 1996 to September 1997. It was further stated that he entered the United States in September 1997 and began serving as a full-time volunteer at the petitioning church while being supported by his business revenues from Mexico.

At 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 December 21, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in the proffered position since at least December 21, 1996.

The director found that the beneficiary's claimed voluntary religious work in the United States did not satisfy the prior work experience requirement. After a review of the record, it must be concluded that the director's analysis was correct.

First, the record in this matter is extremely limited. The petitioner submitted letters attesting to the beneficiary's alleged religious work in the United States and English-language documents that are intended as some sort of payroll receipt from the claimed religious employment in Mexico. The Service has no means to verify such subjective documentation. The petitioner did not submit contemporaneous documentation of the beneficiary's claimed employment such as federal tax records or bank records from his claimed employment in either Mexico or the United States. 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).

Second, the petitioner offered no explanation of the unusual events claimed. It cannot be concluded that a mere claim based on a proposed series of dubious uncorroborated events satisfies a petitioner's burden of proof. For example, the beneficiary claimed that he and his family left their home and their business in Mexico, entered the United States as B-2 visitors for pleasure, and immediately commenced full-time uncompensated volunteer work with the petitioning U.S. church. This claim was made without any explanation for this sudden change in careers and without any explanation of how the petitioning United States church recruited the beneficiary under these terms. The petitioner failed to explain, if it was the church's intention to employ the beneficiary in the United States, why it did not file the proper visa petition before the alien entered the United States. Where the petitioner bears the burden to establish continuous experience in an occupation for a two-year period, it is incumbent on the petitioner to provide a credible and comprehensive explanation of the events during that period and be supported by corroborative evidence. The petitioner has not met that burden.

Third, as found by the director, the plain meaning of the term "occupation" is a person's principal activity and means of livelihood. Many persons perform extensive volunteer work with religious institutions as an expression of their faith. They also carry on secular occupations to financially support themselves. In this case, it appears the beneficiary was continuously engaged in a secular business occupation during the two-year period, rather

than a religious occupation. The fact that the beneficiary may have been active in one or more churches, and may have even received a "stipend" from one of the churches as claimed, does not establish that he was engaged in a religious occupation as contemplated by section 101(a)(27)(C) of the Act. Clearly voluntary participation in church activities does not constitute continuous experience in a religious occupation as required in this proceeding. In this case, it appears that the beneficiary was engaged in a secular occupation as a business owner. The fact that the beneficiary may have been active in church activities as well, cannot be considered having been continuously carrying on a religious occupation.

It is noteworthy that there is no bar to the petitioner applying for nonimmigrant classification of the beneficiary under section 101(a)(15)(R) of the Act, which does not require prior experience, and employing him for the requisite two years and then applying for special immigrant classification.

The remaining issue is the prospective employer's 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

The petitioner stated that the proffered wage in this matter is \$20,000 per year. The petitioner submitted mortgage documents and copies of bank statements to demonstrate its financial ability to pay the proposed salary. These documents do not satisfy the regulatory requirement. The petitioner must submit evidence of its ability to pay in the form of annual reports, federal tax returns, or audited financial statements.

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.