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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: EAC-00-120-52319

Office: Vermont Service Center

Date:

JUL 13 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

*Robert P. Wiemann*  
Robert P. 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 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 her as its "children's pastor" at a salary of either \$15,000 or \$34,200 per year.

The center director denied the petition determining that since the petitioner claimed that the beneficiary had volunteered in the position for the preceding three years it had not tendered a qualifying job offer pursuant to 8 C.F.R. 204.5(m)(4).

On appeal, counsel for the petitioner argued, in pertinent part, that the petitioner has offered a full-time salaried position and that the job offer is qualifying.

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 submitted documentation indicating that it is affiliated with the Assemblies of God denomination and has the proper tax exempt status as a member of that denomination. It was stated that the beneficiary is a native and citizen of the Philippines who was last admitted to the United States on September 27, 1987, in an undisclosed classification. Her current immigration status is unknown.

The first issue is whether the beneficiary satisfies the two year work experience requirement.

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; or

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 petition was filed on March 23, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously engaged as a minister of religion since at least March 23, 1998.

Regarding the prior work experience, the petitioner asserted that the beneficiary graduated from a four-year course at a Bible college in the Philippines on an undisclosed date. It was stated that she is recognized as a minister in the denomination and served

the petitioner without compensation as its children's pastor since entering the United States.

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.

After a review of the record, it is concluded that the director erroneously relied on the fact that the beneficiary has not been employed by the petitioner in concluding that the job offer was for an unpaid position and thereby not a qualifying lay religious occupation. The petitioner did state terms of remuneration.

8 C.F.R. 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state how the alien will be solely carrying on the religious vocation or occupation and describe the terms of payment for services or other remuneration. Id.

In the original job-offer letter, the petitioner stated that the beneficiary would be paid \$15,000 per year "plus benefits." In the appellate brief, counsel argued that the "base salary" is \$34,200 per year. The extreme discrepancy in the petitioner's claims regarding the amount of the proffered salary goes directly to the credibility of the job offer. Based on this discrepancy, it must be concluded that the petitioner has failed to establish a qualifying job offer.

There are additional deficiencies in the petition.

First, the petitioner bears the burden to establish that the beneficiary is qualified to perform the functions of a member of the clergy in its denomination. The petitioner has not explained the standards required to be recognized as a minister in its denomination or shown that the beneficiary has satisfied such standards. Pursuant to the regulations, a "lay preacher" not authorized to perform all the duties of a minister is not qualifying. Merely submitting a statement that an individual is recognized as a minister is not sufficient in these proceedings. See Matter of Rhee, 16 I&N Dec. 607, 610 (BIA 1978). For this reason as well, the petition may not be approved.

Second, the petitioner made no claim and submitted no evidence that the beneficiary was engaged "solely" as a minister of religion during the two-year period or that she would be "solely" engaged as a minister in the proposed position. For these reasons as well, the petition may not be approved.

The final issue is the petitioner's ability to pay the proffered wage. 8 C.F.R. 204.5(g)(2) requires a petitioner to show evidence of its ability to pay the proffered wage. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. Id.

The petitioner did not clearly establish the terms of remuneration offered to the beneficiary. Nevertheless, the petitioner submitted internal financial statements to demonstrate its financial ability to pay the proposed salary whatever its terms. These documents do not satisfy the documentary requirement. The petitioner must submit evidence of its ability to pay in the form of annual reports, federal tax returns, or audited financial statements. 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.