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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



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Office: Vermont Service Center

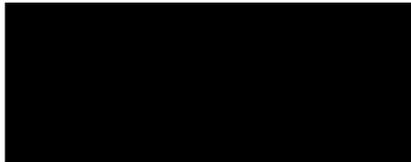
Date:

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 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, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was revoked by the Director, Vermont Service Center.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 "Bible instructor for preschool group" at an unstated salary.

This matter has an unusual procedural history. The petitioner filed an I-360 petition for classification of the beneficiary as a special immigrant on July 7, 1997. The petition was approved on February 18, 1998. The petitioner also filed an identical petition on January 14, 1998. That petition was denied on August 24, 1998, on the grounds that the proposed position was not a qualifying religious occupation.

On discovery of the error in approving the first petition, the center director issued a Notice of Intent to Revoke approval of the petition dated June 20, 2000. After consideration of the petitioner's response to the notice, the director revoked approval of the petition on September 14, 2000, on the grounds that the proposed position of "Bible instructor for preschool group" had not been shown to be a qualifying religious occupation.

The petitioner filed an untimely appeal from the revocation on November 13, 2000. The center director then reissued a copy of the revocation notice on December 7, 2000, without comment.

An untimely appeal cannot be accepted. 8 C.F.R. 103.3(a)(2)(v)(B). Due to the procedural irregularities, as a matter of discretion the Service will reopen the case on its own motion *sua sponte*.

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 Korean Presbyterian Church in America denomination. It was granted the appropriate tax exempt recognition by the Internal Revenue Service on March 7, 1996. The petitioner did not give an indication of the size of its congregation, but claimed 1996 revenues of approximately \$104,000. The petitioner claimed two full-time employees and claimed immigrant petitions pending for four additional alien workers. The beneficiary is a native and citizen of Korea. It was claimed that she last entered the United States, without inspection by an immigration officer, in November 1996 from Canada. The record therefore indicates that the beneficiary has resided in the United States in an unlawful status since entry.

At issue in this proceeding is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

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) (2) states, in pertinent part, that:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. 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.

An official of the petitioner stated that the beneficiary completed an 11-week course for Bible instructors, was employed in that capacity from 1984 to October 1996 in Korea, and has been employed by the petitioning church as a Bible instructor since November 1996 at a wage of \$200 per week. It was stated that the beneficiary is employed in a full-time, 40 hour per week capacity.

The regulation defining a qualifying religious occupation is worded in a broad manner. This is to accommodate the range of religious occupations in various religious traditions. While "religious instructor" is listed as an example of a qualifying religious occupation, the Service must look beyond the title of a position. The Service must look at the duties of the position, the sufficiency of evidence submitted, and the credibility of the claim.

In this case, the petitioner did not provide any indication of the size of its congregation or the size and nature of its "preschool group" in which the beneficiary would be employed. 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).

Clearly, it is not reasonable to claim that preschool-age children are engaged in religious instruction for 40 hours per week. Many churches do sponsor day-care and preschool programs which may include appropriate religious presentations to the children. A worker in such a day-care or preschool program, however, is not considered to be engaged in a religious occupation for the purpose of special immigrant classification. The duties of a day-care/preschool worker are essentially secular, even where the program is sponsored by a church.

On appeal, counsel argued that the beneficiary has completed prescribed training for the position and that the position is recognized by the church as a "religious position." The argument is not persuasive.

First, as discussed above, the Service must look at the totality of the evidence presented. In this case, the petitioner failed to present any information regarding the nature of its "preschool group" program and any evidence that the position is recognized by denominational authorities as a traditional religious occupation. The record is not persuasive in establishing that the specific

position of "Bible instructor for preschool group" with the petitioning church is a qualifying "religious instructor" within the meaning of 8 C.F.R. 204.5(m)(2) and section 203(b)(4) of the Act.

Second, the mere statement by an official of the petitioning church, or its legal counsel, that the proposed position is a "religious position" is not sufficient. The petitioner must submit evidence of its claim. Absent such evidence, the petitioner fails to satisfy its burden of proof. Determining the status or the duties of an individual within a religious organization is not a matter under the Service's purview; determining whether that individual qualifies for status or benefits under our immigration laws is another matter. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. Matter of Hall, 18 I&N Dec. 203 (BIA 1982); Matter of Rhee, 16 I&N Dec. 607 (BIA 1978).

Beyond the discussion in the director's decision, the petitioner has failed to demonstrate eligibility on other grounds. The petitioner has failed to establish that it has the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2); that it has extended a qualifying job offer pursuant to 8 C.F.R. 204.5(m)(4); and that the beneficiary has the requisite continuous work experience in a qualifying religious occupation for the two years preceding the filing of the petition pursuant to 8 C.F.R. 204.5(m)(3)(ii)(A). As the appeal will be dismissed on the grounds discussed, these issues will not be examined further.

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.