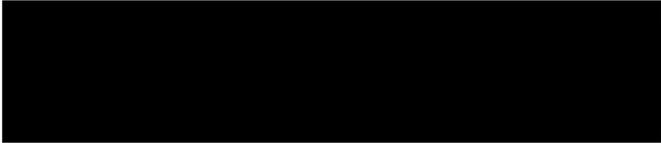




CA

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: [Redacted]

Office: Texas Service Center

Date: JUL 16 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

Myra L. Rosenberg
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Texas 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 "church school teacher" at a salary of \$1,800 per month.

The director denied the petition finding that the beneficiary's claimed volunteer work at the church did not satisfy the requirement that she 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 and that there was no evidence of her claimed religious occupation abroad.

On appeal, counsel for the petitioner explained that the beneficiary was employed by a parent church in Korea to work at the petitioning U.S. church until she received employment authorization.

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 incorporated in 1992 that is affiliated with a Korean Christian denomination known as the Good News Mission. It is was granted the appropriate tax exempt recognition by the Internal Revenue Service on August 12, 1993. The beneficiary is a native and citizen of Korea who was last admitted to the United States on November 9, 1998, as a B-2 visitor. The petitioner claimed that the beneficiary was granted R-1 classification as a religious worker on February 1, 2000, however, proof of that change of classification was not submitted to the record. The beneficiary's current immigration status is unknown.

The first 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 April 24, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in the proffered position since at least April 24, 1998.

The petitioner initially claimed that it has employed the beneficiary since February 15, 2000, and that she performed duties for the church on a voluntary basis since such time. The director found that the beneficiary's claimed voluntary religious work in the United States, prior to February 15, 2000, did not satisfy the prior work experience requirement and that there was no indication of her occupation prior to entering the United States.

On appeal, counsel explained that the beneficiary has been employed and paid by the Good News Mission in Korea since at least April 1998 and that the petitioning church commenced employing the beneficiary after she received employment authorization in February 2000. Counsel submitted an English-language letter from the Good News Mission and also submitted what was termed "random pay stubs" from that organization as proof that the beneficiary was continuously engaged in a religious occupation. It must be concluded that the submission of "random pay stubs" is not sufficient to establish the petitioner's claims.

On review of the record, it must be concluded that the director's objection has not been overcome.

First, the record in this matter is extremely limited. The letter from the Good News Mission only states that it was responsible for the beneficiary's expenses. It did not state that the beneficiary was a full-time employee of the organization and did not state the terms of remuneration. Moreover, the petitioner did not submit corroborative documentation of the claim such as the beneficiary's employment contract or tax records, foreign and domestic.

The Service has no means to verify the authenticity of the letter submitted. It must be concluded that based on the lack of a comprehensive description of the beneficiary's employment history and the lack of corroborative documentation, the written claim that the beneficiary has been employed by a religious institution is not sufficient to satisfy the petitioner's burden of proof. 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 claim that the beneficiary was specifically sent by the foreign organization to be employed by the U.S. church. For example, the petitioner failed to explain the reasons that the alleged foreign employer did not obtain the proper visa to allow the beneficiary to

be employed in the United States, allowed her to be admitted as a B-2 visitor for pleasure, and then sought a change of classification more than a year later. 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. The petitioner has not met that burden.

Third, the petitioner failed to provide proof of the beneficiary's alleged change of classification to R-1 religious worker and failed to offer any explanation for its failure to submit such elementary evidence. It is noteworthy that if the beneficiary is in R-1 classification, there is no bar to the petitioner applying for special immigrant classification after the requisite two years of continuous work experience can be established. The unusual actions of the petitioner and the persistent lack of documentary evidence goes directly to the credibility of the petitioner's claims in support of the petition.

The record reflects additional deficiencies in the petition. It has not been established that the proposed position constitutes a qualifying religious occupation.

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 proposed position in this matter is "church school teacher." The petitioner did not provide a description of the duties or the work schedule for the position. Not all positions with a religious organization are qualifying. The definition at 8 C.F.R. 204.5(m)(2) reflects that wholly secular positions are not qualifying. If the position is intended as a lay teacher at a parochial school, such a position is not qualifying as a religious occupation. The petitioner failed to establish that the past or proposed position of the beneficiary is a religious occupation for the purpose of special immigrant classification.

An additional 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 \$21,600 per year. The petitioner submitted internal financial summaries 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.