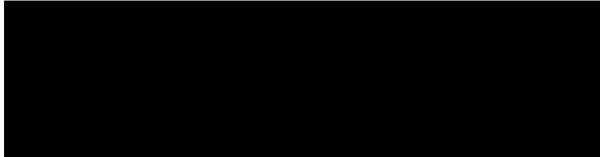




01

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-00-022-52539 Office: Vermont 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: [Redacted]

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

*Myron L. Rosenly*  
for 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**DISCUSSION:** The immigrant visa petition was revoked by the Director, Vermont Service Center.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 described as 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 "religious missionary" at a salary of \$250 per week.

The director revoked approval of the petition finding that the petitioner failed to establish that the duties of the position constituted a qualifying religious occupation for the purpose of special immigrant classification.

Counsel for the petitioner filed an appeal and argued that the decision was erroneous and an abuse of discretion. Counsel argued that the duties of the position are a sensitive religious matter that requires specific religious training and that it qualifies for classification under section 203(b)(4) of the Act.

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 [REDACTED] movement. The petitioner claimed a congregation of 65 members and submitted evidence that it leases space in an established church building from 1:00pm to 5:00pm on Sundays. It was claimed that the petitioner has a single employee, the pastor, at a wage of \$250 per week.

The beneficiary is a native and citizen of Korea. It was claimed that he was last admitted to the United States on October 30, 1998, as a B-2 visitor. The record therefore indicates that the beneficiary remained beyond his authorized stay and has resided in the United States since such time in an unlawful status. The petitioner also stated that the beneficiary has a college degree in business administration and that he has been employed in a secular capacity.

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.

\* \* \*

(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.

In a statement in support of the petition, the pastor stated that the duties of the position of religious missionary include assisting the pastor, baptizing and converting individuals, conducting prayer meetings, and visiting the sick and needy. The pastor stated that the position is full-time. He described the weekly work schedule for the position as neighborhood canvassing for two hours and visiting the sick, needy, and poor for two hours each morning. No description of the duties to be performed during the afternoon was provided.

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 the term "missionary" is often associated with a religious occupation, although often as a minister traveling to countries where the particular religion is not practiced, 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 has asserted that the beneficiary would be employed proselytizing for its particular religious tradition. It was claimed that the beneficiary has received specific training in this practice. The petitioner, however, did not provide any documentation from an authority of this religious movement showing that the position is a traditional religious occupation and that lay persons receive specific training and are employed as missionaries. 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 a lay worker could be employed in a full-time capacity visiting or canvassing the members of a 65-member congregation. Many denominations do employ persons to attempt to convert individuals to their faith by going door-to-door. The petitioner in this matter, however, has not provided any evidence that such employment is a tradition in the religious denomination with which it is affiliated. There is no claim that it has ever employed persons in this capacity in the past and there is no explanation of its decision to employ the alien beneficiary, rather than a member of its congregation. There is no indication that other candidates were considered. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. The petitioner's claims must be credible. See Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966); Matter of Semerjian, 11 I&N Dec. 751 (Reg. Comm. 1966). In this case, it must be concluded that the petitioner has not established that duties of the proposed position of religious missionary constitute a qualifying religious occupation within the meaning of section 203(b)(4) of the Act.

On appeal, counsel argued that the decision is an abuse of discretion and that the position requires specific religious training. Counsel further contended that the center director evidenced a predisposition to deny the petition.

Counsel's argument is not persuasive. Counsel failed to advance a specific allegation of abuse of discretion. The record reflects that the director merely applied the regulations to the facts presented in the record of proceeding.

The additional claims made on appeal are insufficient to overcome

the director's decision. While a religious organization might provide some training to volunteers or employees engaged in "neighborhood canvassing," the record is not persuasive that such a position rises to the level of a "religious occupation" contemplated by the Act. There is no evidence that churches affiliated with the "Swedenborgian movement" have a tradition of specific religious training pertaining to religious missionaries or that it has a traditional practice of employing lay persons as missionaries. The record indicates that the position is a new one created by the petitioner for the beneficiary. In a notarized statement dated August 25, 2000, that pastor of the church stated that the petition was filed as a "reward" for the beneficiary's past voluntary devotional service to the church. Based on these facts, it cannot be concluded that the petitioner has established that "religious missionary" is a qualifying religious occupation for the purpose of special immigrant classification.

In addition, administrative notice is made that 8 C.F.R. 204.5(m)(2) specifically prohibits any form of fundraising from the duties of a qualifying religious occupation. Door-to-door canvassing often involves the solicitation of funds. While there is no claim that the instant position involves the solicitation of funds, the absence of any history of persons employed in the proposed position raises the question of whether fundraising might have been involved in the beneficiary's past voluntary work or could be involved in the proposed paid position in the future.

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 is a qualifying organization exempt from, or eligible for exemption from, taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations pursuant to 8 C.F.R. 204.5(m)(3)(i); that it has the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2); 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); or that the beneficiary is qualified to perform a religious occupation pursuant to 8 C.F.R. 204.5(m)(3)(ii)(D). As the appeal will be dismissed on the grounds discussed, these issues need 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.