



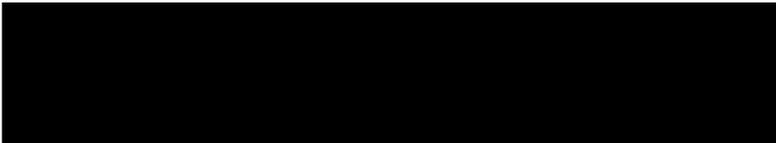
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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street, N.W.
U.S. Department of Justice
Washington, D.C. 20545

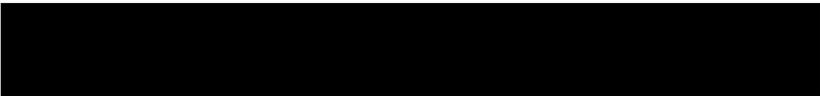
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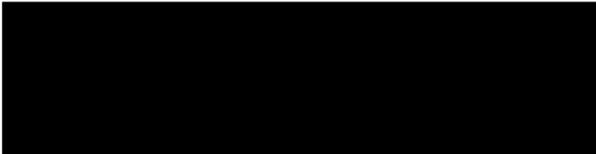
File: EAC-99-160-53745 Office: Vermont Service Center Date:

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:

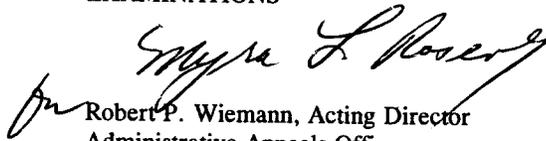
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an official of a religious organization which claims to operate approximately 30 individual churches in the United States. 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), to be employed as a "pastoral assistant" at one of its member churches in Dover, New Jersey.

The director denied the petition finding that the petitioner failed to adequately establish its claim that the beneficiary had the requisite continuous work experience in a qualifying religious occupation during the two-year period immediately preceding the filing date of the petition. The director noted that the petitioner's claim that the beneficiary was paid in cash without benefit of employee tax records and therefore no proof of the claimed employment was available was not sufficient to satisfy its burden of proof.

On appeal, counsel for the petitioner asserts that the regulations do not require W-2 forms or tax records and that the Service should accept the claims made by the official.

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 petitioning organization was described as having been established in 1992 in Florida and that it now operates 30 individual churches. The beneficiary is described as a native and citizen of Colombia who last entered the United States on June 26, 1992, as a B-2 visitor. The petitioner conceded that the beneficiary remained beyond his authorized stay and has been unlawfully employed since his entry, including a claim of having engaged in unauthorized employment by two of the churches in the petitioning religious organization.

At issue in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous work experience in the proffered position.

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 19, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious occupation since at least April 19, 1997.

In its job-offer letter accompanying the petition, an official of the petition organization asserted that the beneficiary had been employed as a pastoral assistant at an affiliated church in Atlantic City, New Jersey from June 1997 to January 1999 and has been employed at the petitioning church in Dover, New Jersey since January 1999. The petitioner declared that the beneficiary was paid in cash because he does not have a U.S. Social Security number.

On appeal, the petitioner submitted, in pertinent part, a letter signed by Rev. Adrian Burgos on the letterhead of what appears to be the Florida headquarters of the denomination. Rev. Burgos submitted the original petition on church letterhead with a Brewster, New York address. The organization and hierarchy of the organization/denomination was not explained. Nor was Rev. Burgos' position in the organization fully explained. In the second

letter, Rev. Burgos again testified that the beneficiary had been employed by the two member churches as claimed. Counsel argued that these letters from a church official should be sufficient to establish the claim of prior employment in a religious occupation.

On review, it is concluded that counsel's argument does not overcome the basis for denial.

First, the director noted that Rev. Burgos had filed ten similar petitions for alien religious workers. The director therefore requested additional evidence to support the claimed prior employment of the beneficiary in a religious occupation such as tax or payroll records. In response, the petitioner stated that no such records were available since the beneficiary was "off the books."

As noted by counsel, the regulations do not specify the evidentiary requirements to establish the prior employment. 8 C.F.R. 204.5(m) (3) (B) (iv) provides, however, that the director may request appropriate additional evidence deemed necessary to establish eligibility. The director, in his discretion, requested such evidence. Counsel's argument that the Service must accept the petitioner's unsupported claim regarding the beneficiary's employment because he was employed in an unlawful manner is not persuasive. The fact that the petitioner allegedly employed the beneficiary in violation of state and federal law regarding employment and taxation cannot be considered to relieve it from satisfying its burden of proof in a visa petition proceeding. Nor does it explain the complete absence of any documentary record of the beneficiary's alleged employment for two years such as the payroll records of the churches or relevant financial records.

Furthermore, the director's stated concerns about the number of petitions filed by the organization are not unreasonable. It is noteworthy that the copy of the director's decision mailed to the Dover, New Jersey church was returned by postal authorities marked "undeliverable" and "unable to be forwarded." The inability to confirm the location of the church at which the alien has been and would be allegedly employed further sheds doubt on the bona fide nature of the instant visa petition.

Second, the petitioner claimed that the beneficiary had been employed since June 1997. Even if that claim were adequately and credibly established, the petitioner did not claim that the beneficiary had been employed in a qualifying religious occupation since at least April 1997 as required. Therefore, the petitioner's claim regarding the past employment, on its face, is not sufficient to establish eligibility.

For these reasons, it is concluded that the petitioner failed to establish that the beneficiary had been continuously engaged in a

religious occupation from at least April 1997 to April 1999.

Beyond the discussion in the director's decision, the petition may not be approved due to other grounds of ineligibility.

The petitioner must establish that it is a qualifying tax-exempt religious organization eligible for special immigrant classification of the alien beneficiary.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

The petitioner submitted a notice dated March 27, 1992 from the Internal Revenue Service ("IRS") granting the appropriate tax-exempt status to United Latin American Pentecostal Church, Inc. of Princeton, Florida. The letter does not confer such tax-exempt recognition to affiliated churches. Therefore, the petitioner failed to establish that either the alleged Dover or Atlantic City churches are qualifying religious organizations for the purpose of this proceeding. For this reason as well, the petition may not be approved.

The petitioner must also establish its ability to pay the proffered wage of \$325 per week, or \$16,900 per year.

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 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 annual reports, federal tax returns, or audited financial statements.

The petitioner submitted a copy of a federal tax return from a

Pentecostal church in Miami, Florida. This document does not satisfy the petitioner's burden of proof in establishing that the Dover, New Jersey church has the ability to pay the beneficiary's wage. This documentation must be in the form of annual reports, federal tax returns, or audited financial statements of the prospective employer. The petitioner has not met this burden. 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, that burden has not been met.

ORDER: The appeal is dismissed.