



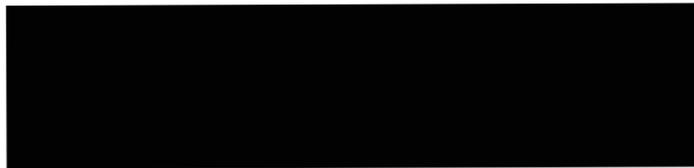
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U.S. Department of Justice

Immigration and Naturalization Service

CONFIDENTIAL
EXEMPT FROM DISCLOSURE
DIVISION OF PERSONAL PRIVACY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: Nebraska Service Center Date: 24 APR 2002

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: Self-represented

PUBLIC COPY

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. Rose
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and 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 that he may serve the church as an "elder/assistant to the pastor."

The director denied the petition finding that the petitioner failed to establish that the beneficiary had had at least two years of continuous experience in a religious occupation during the period immediately preceding the filing of the petition as required by the regulations.

On appeal, an official of the petitioning church submitted, in part, a statement reflecting that the beneficiary has been serving the church under an official appointment since January 1998.

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 in this matter is a church affiliated with the General Conference of Seventh-Day Adventist Churches and claiming the appropriate tax exempt recognition as a member church. The beneficiary is a native and citizen of Indonesia who was last admitted to the United States on February 25, 1994, as a B-2 visitor. The record reflects that he remained beyond his authorized stay and has resided in the United States since such time in an unlawful status. The petitioner failed to indicate at the space provided on the petition form whether the beneficiary has ever been employed in the United States without authorization.

The record has been reviewed *de novo*. It must first be noted that the petitioner did not provide all required information on the petition form. Absent all required information, the petition cannot be properly adjudicated. The petition may be denied as incomplete solely on this basis. See 8 C.F.R. 103.2(a)(1).

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The petitioner must establish that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

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 December 11, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least December 11, 1998.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify. As noted by the director, the Service holds that lay persons who perform volunteer activities, especially while also engaged in a secular

occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

On appeal, the official of the church stated, in part, that "it is highly unusual for an Elder to be paid."

Accordingly, there is no indication in the record that the beneficiary has been employed in a full-time salaried occupation with the church since at least December 1998. Any part-time voluntary services donated to the church, while engaged in a secular occupation, are not considered qualifying prior experience for the purpose of special immigrant classification.

The petitioner also must demonstrate that a qualifying job offer has been tendered.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

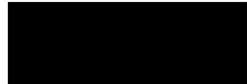
Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has not identified the terms of remuneration or shown that the alien would not be dependent on supplemental employment. Therefore, it has not tendered a qualifying job offer.

A petitioner also must demonstrate its 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 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 has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the documentary requirement of this provision.

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.