

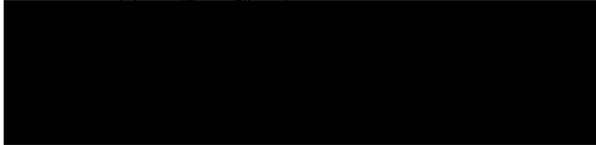


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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-00-181-50959 Office: California Service Center

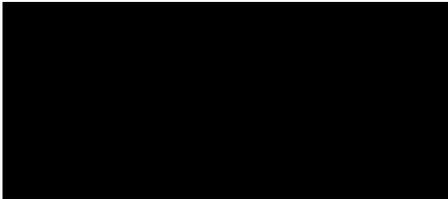
Date: 2 JUL 2002

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:



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

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded.

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 him as "music director" at a salary of \$1,700 per month.

The director denied the petition finding that the petitioner failed to establish that it is a qualifying tax exempt organization. The director noted that the petitioner's tax exemption certificate reflected a different address from the church's current address.

On appeal, counsel for the petitioner explained that the church had moved since the certificate was issued and submitted a photograph of the church showing its current street number.

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 an independent church. The pastor did not provide a description of the size of its congregation or the number of employees. The record reveals that the beneficiary is a native and citizen of Korea who was last admitted to the United States on August 1, 1998, in F-1 classification, authorized to pursue a Master's degree in religion from Bethesda Christian University.

The record has been reviewed *de novo*. In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

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).

To address this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated September 14, 1993, reflecting that the petitioner is a tax exempt organization under section 501(c)(3) of the Internal Revenue Code (IRC).

On review, it may be concluded that the petitioner has adequately demonstrated that it has the appropriate tax exempt classification as a religious organization. Therefore, the director's objection has been overcome.

However, the petition may not be approved. Beyond the discussion in the director's decision, the petitioner has failed to demonstrate eligibility on other grounds.

8 C.F.R. 204.5(g)(2) requires a prospective employer to submit its annual reports, federal tax returns, or audited financial statements to demonstrate the ability to pay the proffered wage. The petitioner failed to submit such required documentation.

8 C.F.R. 204.5(m)(1) requires that the beneficiary of such a

petition has been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition. The petitioner failed to submit evidence, such as tax records, to establish that the beneficiary has been continuously employed as claimed.

8 C.F.R. 204.5(m) (3) (ii) (A) requires that the beneficiary have been a member of the petitioner's denomination for at least the two years preceding filing. Here, the petitioner submitted documentation showing that the beneficiary was employed by, and therefore a member of, a Presbyterian church during the two-year qualifying period. Therefore, the petitioner has not demonstrated the required denominational affiliation.

8 C.F.R. 204.5(m) (2) defines qualifying religious occupations. The petitioner has not adequately demonstrated the size of its congregation or the number of services to establish that it could reasonably utilize the services of a full-time permanent choir director as alleged. A petitioner must credibly establish its intent to employ the alien beneficiary in the capacity specified in the petition. Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966).

The record will be remanded for further review consistent with the above and issuance of a new decision.

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 petition is remanded.