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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: WAC-01-079-53664 Office: California Service Center Date: JUN 21 2002

IN RE: Petitioner: [redacted]
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: [redacted]

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. Rosen

for 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 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 "visiting/cell pastor" under unstated terms of remuneration.

The director denied the petition finding that the petitioner failed to establish that beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition. The director found that the beneficiary's claimed volunteer work with her church in Korea from January 1999 to June 200 was insufficient to satisfy the requirement and that there was no evidence to support the claim that she was employed by the petitioning church from July 2000 to January 2001.

On appeal, counsel for the petitioner argued that the beneficiary was a paid employee of her church in Korea and also asserted that she has worked for the petitioning church since July 2000.

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 Church of the Nazarene denomination headquartered in Kansas City, Missouri. It did not provide a description of the size of its congregation or the number of employees. The beneficiary is a native and citizen of Korea. A certificate was submitted indicating that the beneficiary graduated from the Seoul Theological University in 1995. She was last admitted to the United States on June 12, 2000, as a B-2 visitor. The record reflects that she was granted R-1 classification as a nonimmigrant religious worker authorized for employment with the petitioner valid from December 6, 2000 to October 30, 2003.

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.

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 January 8, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least January 8, 1999.

In this case, a "certificate of experience" dated August 25, 2000 was submitted from the Korea Evangelical Holiness Church. In regards to the beneficiary's experience, the certificate stated:

> January 10, 1994 - June 30, 1997 Minister at church
> February 13, 1995 - December 30 1998 Minister at church
> January 1, 1998 - now Minister at Hwapyeong church

Counsel further asserted that the beneficiary "worked" as a cell pastor at the petitioning church since July 2000.

On review, it must be concluded that the certificate of experience submitted in support of the petition is insufficient to establish that the beneficiary was continuously carrying on a religious

vocation or occupation from at least January 8, 1999 through the date the beneficiary entered the United States in June 2000. The certificate does not specify the location or nature of the beneficiary's alleged employment and does not explain the overlapping dates of employment attested to in the certificate. The statement by counsel on appeal that the beneficiary was paid the equivalent of US$800 per month does not overcome the director's concerns. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533 (BIA 1988). Simply 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).

Nor is there any claim or evidence that the beneficiary was continuously employed by the petitioner since her admission to the United States in June 2000. The written statement by the pastor of the petitioner that the beneficiary was actually employed from January through March 2001 tends to contradict any claim that she was employed from June 2000 as alleged by counsel. There is no contemporaneous documentation, such as certified tax records, that the beneficiary has, in fact, been employed by the petitioner at any time. Accordingly, it must be concluded that the petitioner has failed to overcome the grounds for denial of the visa petition. It must also be noted that the evidence reflects that the beneficiary is not in compliance with the terms of her R-1 classification.

In order to establish eligibility for special immigrant classification, the petitioner also must establish that the beneficiary was a member of the petitioner's religious denomination for the same two year period. 8 C.F.R. 204.5(m)(3)(ii)(A).

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

> *Religious denomination* means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

The petitioner in this case is a member church of the Church of the Nazarene denomination. Prior to entering the United States, counsel stated that the beneficiary was a member of the Hwapyeong

church, which is a member church of the Holiness Church denomination. There is no evidence that the Church of the Nazarene in the United States and the Holiness Church in Korea are the same religious denomination as defined in this proceeding. A mere similarity in creeds is not sufficient to satisfy the denominational membership requirement. Therefore, the petitioner has failed to establish that the beneficiary has satisfied the two-year denominational membership requirement.

The next issue 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)(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.

In this case, the proposed position is "cell pastor." The petitioner has not specified whether this is a ministerial position or a lay position. Nor has the petitioner submitted any proof that this is a traditional religious vocation or occupation within the denomination. The statement from the pastor of the petitioning church is considered, but is insufficient to satisfy the burden of proof. To establish that an alien is qualified in a religious position and has been carrying on such a position, acceptable evidence includes a letter from a Superior or Principal of the denomination in the United States. Matter of Varughese, 17 I&N Dec. 399 (BIA 1980). Here, the petitioner has not submitted evidence that the proposed position is traditionally a permanent paid position within the denomination.

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 submitted a copy of a written job offer, has not identified the terms of remuneration, and has not shown that the alien would not be dependent on supplemental employment. A statement from petitioner's counsel may not be accepted as a job offer from the petitioner. Therefore, the petitioner 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.