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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

[redacted]

File: EAC-00-161-53473 Office: Vermont 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: 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. Rosenberg

for Robert P. Wiemann, 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 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 one of its administrative staff operating the church-owned campground/conference center in exchange for "housing, food, and daily necessities."

The director denied the petition on the grounds that the petitioner failed to respond to a written request for proof of the church's financial ability to support an employee.

On appeal, an official of the petitioner asserted that the church has substantial assets including its ownership of 88 acres on which the campground/conference center is located.

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,
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> (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 described as a church with a congregation of approximately 300 members. The church owns and operates a "regional campground/conference center" with an operational staff of 30 employees. The beneficiary is a native and citizen of the Philippines who entered the United States as an R-1 religious worker on August 30, 1996, authorized for employment by the Word of the World, Miami, Florida. Her current immigration status and employment are unknown.

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

At issue in the director's decision is the petitioner's ability to pay a qualifying 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.

In this case, 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. Accordingly, the petitioner has failed to overcome the grounds cited as the basis for denial of the visa petition.

Beyond the decision of the director, the record reflects additional grounds of ineligibility.

First, a petitioner must establish that the proposed position is a qualifying religious occupation for the purpose of special immigrant classification pursuant to the definition at 8 C.F.R. 204.5(m)(2). In this case, the duties of an administrative worker at a campground/conference center, even if operated by a church, are considered a wholly secular function that does not qualify as a religious occupation.

Second, a petitioner must establish that the beneficiary had been continuously carrying on a religious occupation for at least the

two years preceding the filing of the petition. 8 C.F.R. 204.5(m)(1). In this case, the two-year period is from May 15, 1998 to May 15, 2000. The record does not contain proof that the beneficiary was continuously employed in any occupation, religious or secular, during that period.

Third, a petitioner must state the terms of remuneration and establish that the alien will not be dependent on supplemental employment. 8 C.F.R. 204.5(m)(4). In this case, it must be concluded that the remuneration offered by the church in the form of "room and board" is insufficient to establish that the beneficiary will not be dependent on supplemental employment.

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.