C1

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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: Texas Service Center Date: 1 - MAR 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]

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

Myron L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the District Director, Miami, Florida. The matter is now before the Associate Commissioner for Examinations on appeal. The record of proceeding will be remanded to the Director, Texas Service Center.

The petitioner is a church that 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 an "assistant outreach director" at a wage of $8.00 per hour.

The petitioner filed the Form I-360 visa petition at the Miami, Florida district office of the Immigration and Naturalization Service on or about March 20, 1997. The district director issued a notice of intent to deny the visa petition dated April 13, 2001 and subsequently denied the visa petition in a decision dated July 6, 2001.

A Form I-360 visa petition must be filed with the Service Center having jurisdiction over the intended place of employment, unless specifically designated for local filing by the Associate Commissioner. 8 C.F.R. 204.5(b). Here, there is no evidence that the Service office at Miami, Florida was designated for local filing of I-360 visa petitions. Accordingly, the record will be remanded to the Texas Service Center for entry of a new decision.

Beyond the discussion in the district director's decision, administrative notice is made that the petitioner has failed to demonstrate eligibility on other grounds. The visa petition was denied based on the failure of the petitioner to establish that the two-year prior experience requirement of 8 C.F.R. 204.5(m)(1) was satisfied.

8 C.F.R. 204.5(m)(1) requires that the beneficiary of such a petition was continuously carrying on a religious occupation for at least the two years preceding the filing of the petition. The Service does not recognize the donation of voluntary services to one's church, incidental to one's secular occupation, as satisfying this requirement. As such, the district director's finding is affirmed.

8 C.F.R. 204.5(m)(3)(i) requires a petitioner to submit proof that the prospective employer is a qualifying religious organization exempt from, or eligible for exemption from, taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. The petitioner failed to submit such required documentation.

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.

The record will be remanded for review and the issuance of a new decision. If the decision is adverse, the petitioner may appeal without fee.

ORDER: The record is remanded for the entry of a new decision.