



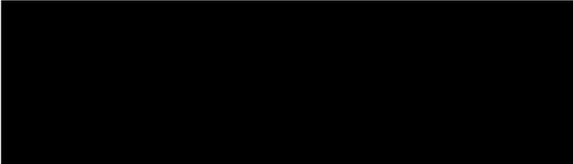
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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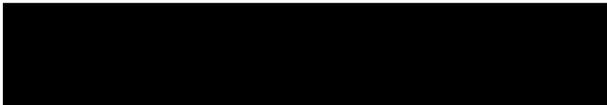


File: EAC-00-072-51142

Office: Vermont Service Center

Date: 4 - MAR 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: 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

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 a "personal intercessor/outreach missionary" at a salary of \$75 per week plus "room and board."

The director denied the petition finding that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification and that the beneficiary did not have two years of continuous experience in a religious occupation as required.

On appeal, an official of the petitioner submitted a revised list of duties, stated that the duties have been full-time, and stated that the beneficiary received religious training from the pastor of the church.

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 claiming affiliation with the Assembly of God denomination. It claims a congregation of 60 members. The petitioner declared one employee, a part-time secretary. It was explained that the pastor is self-employed and receives no compensation.

The beneficiary is a native and citizen of Trinidad who was last admitted to the United States on December 28, 1996, as a B-2 visitor. The record reflects that she remained beyond her authorized stay and has resided in the United States since such time in an unlawful status. The petitioner indicated on the petition form that the beneficiary has never been employed in the United States without authorization.

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).

In this case, the petitioner submitted a copy of the group tax exemption granted to the Assemblies of God denomination, but failed to submit documentation demonstrating that it is a recognized member church of that denomination and is included in the group tax exemption.

The petitioner must either provide verification of individual exemption from the U.S. Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution. Here, the petitioner has not satisfied the

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 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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In this case, the full-time duties of the past and proposed position were described as cleaning the church, personal and corporate intercession, children's ministry, and outreach ministry.

The director found that duties such as cleaning the church, estimated at twelve hours per week, was not considered a duty of a qualifying religious occupation as defined at 8 C.F.R. 204.5(m)(2). On appeal, the pastor explained that the beneficiary actually supervises a team of volunteers that cleans the church.

On review, the petitioner has failed to submit any documentation establishing that the proposed position of personal intercessor/outreach missionary is a traditional religious occupation in the Assemblies of God denomination. Absent such documentation, the petitioner has not satisfied its burden of proof.

In addition, the director's finding that custodial duties are considered wholly secular and are not qualifying is affirmed. It is further noted that the pastor defined the duty of "personal intercession" as praying for the minister. It has not been established that such a duty is traditionally a permanent salaried occupation in the Assemblies of God denomination. Therefore, the duties of "intercession" also cannot be considered qualifying.

Furthermore, the petitioner failed to provide any description of its children's ministry or its outreach ministry to demonstrate that a small church with no full-time employees could reasonably employ an individual in these programs. The petitioner must establish that the situation, nature, and volume of work to be performed could reasonably require an individual in the capacity sought. See Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966).

Accordingly, the petitioner has failed to establish that the proposed position constitutes a religious occupation or that it has the ability or intention to employ the alien in the manner specified.

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 June 3, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least June 3, 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. The regulations are silent on the question of volunteer work satisfying the requirement. The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. 204.5(m)(4). 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 well.

In this case, the pastor of the petitioning church stated that the beneficiary had been a full-time volunteer with the church, but had been supported on a "room and board" basis. On appeal, the petitioner also submitted a letter from the Executive Director of Eagles' Wings, described as a humanitarian aid organization supporting faith-based charitable programs in the New York area. The letter stated that the beneficiary has been one of its volunteer staff as well.

On review, as discussed noted above, voluntary activities are not considered qualifying experience in a religious occupation. The petitioner failed to submit a detailed description of its means of supporting the beneficiary and her dependent child through "room and board." The petitioner also failed to disclose if the beneficiary had been engaged in other employment for her self-support. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as tax documents, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period. A letter from an official of the individual petitioning church is considered, but is not sufficient to satisfy the burden of proof standing alone. 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 of Principal of the denomination in the United States. Matter of Varughese, 17 I&N Dec. 399 (BIA 1980).

Accordingly, the petitioner has failed to establish that the beneficiary has satisfied the prior experience requirement.

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 specified the nature of its "room and board" support. For example, the petitioner has not stated whether it pays part or all of the beneficiary's rent or whether the church maintains suitable quarters that are provided to the beneficiary and her family. Nor has it explained the manner in which it provides meals and health coverage as alleged. It is concluded that 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 in this matter submitted copies of various bank account statements. These documents do not satisfy the regulatory requirement. 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.