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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: LIN-01-198-52810 Office: Nebraska Service Center

Date:

AUG 07 2006

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)

ON BEHALF OF PETITIONER:



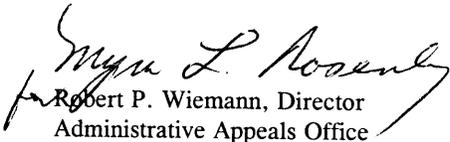
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska 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 him as a "Master of Ceremonies and Head Sacristan."

The director denied the petition on the grounds that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification and failed to establish that the beneficiary had had two years of continuous experience in a religious occupation.

On appeal, the petitioner's counsel submitted a brief.

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 beneficiary is a native and citizen of the Philippines who last entered the United States on November 7, 1990, in an undisclosed manner. His current immigration status is unknown. The petitioner acknowledges on the petition that the beneficiary has worked in the U.S. without permission.

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

The first issue is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

Regulations at 8 C.F.R. § 204.5(m)(2) state, 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 Bureau 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.

On appeal, counsel states, in pertinent part, that:

The Beneficiary in this case does liturgical work and religious instruction. The petitioner provided a specific breakdown of the tasks performed by the Beneficiary in Exhibit 7 which accompanied the Response to the request for evidence. From the itemization, 944 hours per year are liturgical duties. Religious education duties comprise 220 hours per year. Combined, those duties total approximately 58% of his working time at the Parish. In other words, his liturgical duties will require more than half of his working time.

His remaining work, which may be characterized as "administrative," constitutes 32% of his total worked.

Upon review of the record it must be concluded that the petitioner has failed to provide a consistent description of the duties of the position so that the Bureau could reasonably conclude that it would be a permanent salaried position. For example, in a letter submitted in response to the Bureau's request for additional evidence, the petitioner's priest stated, in pertinent part, that:

The Master of Ceremonies role is a public ministerial role. [The beneficiary] coordinates our church's liturgies which include Sunday masses, weekly masses, special Holy days, celebrations of the sacraments (baptisms, first communion, first confession, confirmation, weddings, sacraments of the sick), and funerals.

The master of Ceremonies acts during the liturgy much as a director/producer might direct/produce a play. [The beneficiary] as Master of Ceremonies, makes sure that all persons involved in the liturgy know their role and that they participate at the appropriate times. As a result, he needs to know all persons involved, if necessary meet and train them ahead of time, be present at the event itself, and watch and coordinate all action which takes time.

The Master of Ceremonies dovetails with the role of Head Sacristan. [The beneficiary], as Head Sacristan, works behind the scenes to make sure all supplies needed for a celebration are ordered and are on hand, that the environment is neat and clean, that all vestments are

well-maintained and ready for use. The Head Sacristan acts, if you will, like a person in a play responsible for the props, costumes and the theater.

On appeal, the petitioner's priest states, in pertinent part, that:

The many duties performed by [the beneficiary] as Master of Ceremonies and Head Sacristan were duties previously performed by the Associate Pastor and deacon and are traditional religious functions like teaching and training altar servers, direction of lectors, teaching and training special ministers of the Eucharist, providing assistance to the Stephens Ministers in helping the sick of the parish, and coordinating and assisting at all liturgical celebrations.

On review, the record reveals that of the total 944 hours referred to by counsel on appeal as being hours during which the beneficiary performed qualifying religious functions, 400 hours are designated as "participation at Sunday masses," no further explanation is provided; coordination of Episcopal visits, 17 hours; training for special ministries, 40 hours; funeral masses (not further described), 108 hours, and; "RICA/DRE/BR/Marian, 100 hours. The aforementioned activities total 665 hours of the 944 hours identified. Based on the contradictory evidence contained in the record, it cannot be reasonably concluded that the beneficiary's duties reflect that of a qualifying religious occupation. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. See, *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Further, although the petitioner alludes to the position requiring special religious training and preparation, the record indicates that the beneficiary purportedly acquired such knowledge through self education. The petitioner has failed to establish that the proposed position constitutes a qualifying religious occupation. For this reason, the petition may not be approved.

The petitioner also must establish that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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 May 2, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least May 2, 1999.

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. 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 Bureau 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. For these reasons, the Bureau holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

In this case, it is clear that the beneficiary was engaged in a secular occupation at Design Research Engineering during 1999 and 2000, as evidenced in his 1999 and 2000 Forms W-2 Wage and Tax Statements, submitted in response to a Bureau request for additional evidence. His non-qualifying work with the petitioning church, in addition to his secular employment, is insufficient to satisfy the two-year prior experience requirement necessary for special immigrant classification. Further, the 2001 Form W-2 Wage and Tax Statement reflecting earnings in the amount of \$62,036.25 by the beneficiary for the petitioning is not corroborated by any other documentary evidence, such as pay stubs, bank statements, or an employment letter, and is therefore, questionable. The petitioner has failed to establish that the beneficiary had had two

years of continuous experience in a religious occupation during the two-year qualifying period. For this additional reason, the petition may not be approved.

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.