

PUBLIC COPY

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ad

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

[REDACTED]

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: AUG 15 2003

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Immigrant 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:

[REDACTED]

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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a religious teacher. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious teacher immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, counsel states that the director's decision was "incoherent" and ignored the petitioner's submission of relevant evidence.

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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for

at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “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.”

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on February 8, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a religious teacher throughout the two-year period immediately preceding that date.

The I-360 petition form indicates that the beneficiary entered the United States on February 27, 1992, but this date conflicts with other information indicating that the beneficiary was in St. Kitts several years after that date. Annotations in the beneficiary’s passport indicate that she last entered the United States on August 22, 1999.

The petitioner submits a letter from Pastor Bernard Boland of the Church of God of Prophecy, St. Kitts, indicating that the beneficiary worked as a teacher and performing other tasks for that church from March 1990 to November 1994. This employment falls well outside of the two-year qualifying period. The petitioner also submits training certificates from 1997 and 1998, which likewise fail to establish the beneficiary’s employment from February 1999 onward.

The director instructed the petitioner to submit evidence of the beneficiary’s employment during the qualifying period. The director specifically defined the qualifying period as the two-year period immediately preceding the petition’s filing date. In response, the petitioner has submitted another copy of the above letter attesting to the beneficiary’s employment from 1990 to 1994.

Because the beneficiary was outside the United States for part of the 1999-2001 qualifying period (entering the U.S. on August 22, 1999), the beneficiary’s work for the petitioner cannot, by itself, satisfy the continuous employment requirement even if we assume that the beneficiary began working for the petitioner as soon as she entered the United States. Even so, the petitioner has never claimed or demonstrated that it employed the beneficiary immediately upon her arrival in the U.S.; the petitioner has never specified when it first employed the beneficiary. We infer that

the beneficiary has already begun working for the petitioner prior to the filing date only because a church official uses the present tense when describing the beneficiary's duties for the petitioner.

Another issue in this proceeding is whether the petitioner has made a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States.

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. It is important to observe here that job title alone does not automatically establish eligibility. 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.

Bishop [REDACTED] of the petitioning church states that the beneficiary's duties comprise "teaching adults tradition," "counsel[ing] adults with problems," "private tutoring sessions," and "teach[ing] the Old/New Testament." To establish the beneficiary's training, the petitioner has submitted the following certificates:

- Biblical Training Institute, unspecified training, issued July 30, 1989
- School of Advanced Biblical Studies, Church of God of Prophecy of Canada, verifying "Thirteen hours of Religious Studies in National Bible Camp," May 1997
- International Missions, training as a "Chaplain in Strategic Bible Doctrines and Psychology," November 28, 1998

The petitioner has also submitted a copy of a diploma from Central University of the East, San Pedro de Macoris, Dominican Republic, indicating that the beneficiary earned the title Doctor of Odontology (a branch of dentistry) on April 8, 1986.

The director instructed the petitioner to submit further evidence regarding “the beneficiary’s primary duties, for the two years of qualifying employment. . . . The evidence must establish that the job duties are traditional religious functions above those performed routinely by other members” of the congregation. In response, the petitioner has submitted additional copies of the above certificates from 1997 and 1998. The certificates do not demonstrate or imply that such certificates are necessary qualifications to perform the job the petitioner has offered to the beneficiary.

The director denied the petition. In the denial notice, the director appears to have quoted the entire request for evidence, which touched on several points. Counsel, apparently mistaking the quoted notice for grounds for denial, protests on appeal that the petitioner has already addressed these points. The appellate submission includes what appear to be copies of every previously submitted document.

Following the lengthy quotation from the request for evidence, the director stated “[t]he record does not establish that the beneficiary has the required two years of experience in the religious occupation. The record also does not establish that the beneficiary has been and will continue to be employed in a bona fide religious occupation.” The director asserted that the petitioner had failed to submit “primary evidence . . . to indicate whether or not the beneficiary has the required education and experience for the proffered position or whether or not it is a bona fide religious occupation.” Counsel, on appeal, asserts “[t]he denial is written in an incoherent and unequivocal [sic] manner that is impossible to understand,” but counsel does not explain why the above two passages – which set forth the grounds for denial – are incoherent or incomprehensible.

On appeal, counsel’s appellate brief focuses on three points: (1) the petitioner’s eligibility as a non-profit organization; (2) the letter from Pastor Boland in St. Kitts; and (3) Bishop Campos’ description of the beneficiary’s weekly schedule. The petitioner submits copies of church bulletins from late 2001, identifying the beneficiary as “youth ministry leader” and “service director.”

The petitioner’s tax-exempt status was not a basis for denial; the director’s reference to such status derives from the quoted request for evidence. Regarding the letter from Pastor Boland, it establishes more than two years of experience, but it does not cover the two-year period immediately preceding the petition’s February 8, 2001 filing date. Section 101(a)(27)(C)(iii) of the Act, as cited above, calls for evidence not only that the beneficiary has two years of experience, but that the beneficiary “has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).” The two-year period described in clause (i) is “immediately preceding the time of application for admission,” i.e. the filing of the petition. This requirement is reiterated in the regulation at 8 C.F.R. § 204.5(m)(1), which states “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.” Thus, by means of statute, regulations, a request for evidence, and finally the notice of denial, the petitioner has repeatedly been placed on notice that the qualifying employment must take place immediately prior to the petition’s filing date; employment several years in the past cannot fulfill this requirement. The

petitioner has responded with repeated resubmissions of a letter detailing employment that ended in 1994, accompanied by counsel's emphatic statements that this letter satisfies the relevant requirements.

Because the petitioner has not directly addressed the two specific grounds for denial, the petitioner has not overcome those grounds on appeal. The above is sufficient grounds to dismiss the appeal. We note, in addition, that review of the beneficiary's file reveals further relevant information. In November 1999, a different church filed a petition on the beneficiary's behalf. Specifically, the church filed an I-140 petition seeking to classify the beneficiary as a member of the professions holding an advanced degree. The petition indicated that the beneficiary sought employment as an odontologist, performing "all types of dental work." The petition was later denied due to abandonment.

Because the beneficiary sought to immigrate in November 1999, based on her credentials as a dentist, further doubts arise as to the beneficiary's eligibility. If the beneficiary was working as a dentist in late 1999, then she was not continuously employed as a religious teacher during the 1999-2001 qualifying period. If, on the other hand, the beneficiary was not working as a dentist in 1999, and fully intended to work as a religious teacher, then her participation in an immigrant petition that portrayed her as a dentist cannot have been in good faith. Because the record is devoid of first-hand evidence to establish the beneficiary's employment situation during 1999, we cannot resolve this issue based on the evidence before us, but neither of the above alternatives are conducive to approval of the instant petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.