

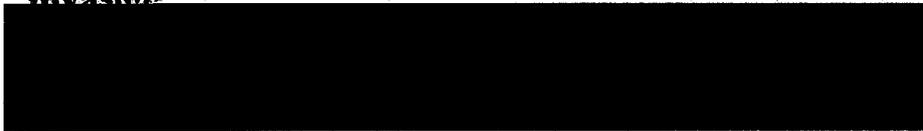
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U.S. Department of Homeland Security

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: EAC 01 143 50045

Office: VERMONT SERVICE CENTER

Date: AUG 20 2003

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:



PUBLIC COPY

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, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a religious organization. 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), to perform services as a "Minister." The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two full years immediately preceding the filing of the petition. The director also found that the record does not establish that the beneficiary will be employed in a religious occupation.

On appeal, the petitioner resubmitted documents and provided additional evidence.

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 to be addressed is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

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).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue Code of 1986 at the request of the organization. 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 April 11, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from April 12, 1999, until April 11, 2001. The petitioner indicated that the beneficiary entered the United States on September 21, 1998, as an F-1 student.

The petitioner submitted a copy of a degree, "Master of Arts with distinction Communication Arts", from the New York Institute of Technology, awarded in August 2000. The petitioner provided a letter dated January 15, 1999, from [REDACTED] Treasurer, West Indies Union Conference of Seventh-day Adventist Church, certifying that the West Indies Conference would undertake all payments on behalf of the beneficiary for the above Master of Arts. The letter requests the school's assistance so that the beneficiary may "commence his studies in July 1999." On appeal, the petitioner submitted an affirmed affidavit by the beneficiary providing detail about his religious duties. The affidavit, in part, discussed the composition of churches in the beneficiary's district in Jamaica, and then discussed a major Evangelistic Campaign he organized, which was held "in the parish of St. Catherine which started on May 30, 1999 and ran for 4 weeks." An undated letter from Joel Nembhard, Pastor, indicates the beneficiary served as his "associate" in the Mandeville (Jamaica) Circuit Churches from 1997 to 1999.

The documentation provided appears to be inconsistent with the beneficiary's date of entry to the United States, and his studies for the Master of Arts program. The petitioner has not offered explanation or documentation to account for how the beneficiary worked in the Adventist churches in Jamaica in 1999, while he had purportedly entered the United States in the fall of 1998, and was completing courses for a Master of Arts degree in New York in 1999 (and 2000).

Discrepancies encountered in the evidence presented call into question the petitioner's ability to document the requirements under the statute and regulations. The discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the

evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

The record reflects that the beneficiary entered the United States to pursue studies as an F-1 student. While the beneficiary may have been sponsored by a religious organization and may later use the skills gained to enhance his religious service, the petitioner has not established that the time spent obtaining the Master of Arts degree would qualify as a full-time religious occupation. The Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). In the instant matter, the record does not discuss the beneficiary's role with the church during the time he studied in New York.¹ The degree was awarded in August 2000. This falls within the two-year period immediately preceding the filing of the petition, during which the beneficiary must have been continuously engaged in religious work.

In addition, the petitioner's letter dated April 11, 2002, states that the beneficiary's "commencement of employment is set for January 1, 2002..." It is unclear what role the beneficiary played in the New York church prior to this date. The record also does not establish whether the beneficiary has received remuneration from the petitioner for any services to date.

Therefore, even if a reasonable explanation were provided for the inconsistencies relating to the beneficiary's date

¹ A link from the "official website" of the Seventh-day Adventist Church features [REDACTED]. The information provided at the cite, [http://www.\[REDACTED\]](http://www.[REDACTED]) notes that while studying for his Master Degree, the beneficiary worked as an "Electronic Journalist" in Long Island, and upon "completion of his studies moved on to work for CNN-New York." The website states "in 2001 he joined the Greater New York Conference" as an Associate Pastor at the [REDACTED] and later was assigned to the [REDACTED].

of entry and his religious work in Jamaica, the petitioner, nevertheless, has not established that the beneficiary worked continuously in a religious occupation during the required timeframe.

The second issue involves the director's determination that the beneficiary will not be employed in a religious occupation. The petitioner seeks to employ the beneficiary as a Minister/Pastor.

The regulations at 8 C.F.R. §204.5(m)(2) define "Minister" as "an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties."

In this case, the petitioner submitted a letter dated January 31, 2002, stating that the beneficiary's duties as a "pastor" include but are not limited to "preaching, presiding over committee meetings, celebrate weddings and funerals [sic], visit the sick and shut-in, comfort the grieving, be a family life educator, present seminars on practical topics." The petitioner states that the "duties imposed on Him as a pastor are not capable of being performed by his members. That is why he attended a theological seminary to prepare him for the challenges of the ministry."

On appeal the petitioner more specifically addressed the beneficiary's duties. In a letter dated April 11, 2002, the petitioner states the beneficiary "has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy." The director's finding that the beneficiary will not be employed in a religious occupation is withdrawn.

Regarding the beneficiary's qualifications to perform the duties of a minister, the record indicates that the beneficiary was baptized into the Seventh-day Adventist Church in 1987. He attended West Indies College, A Seventh-day Adventist Institution in Mandeville, Jamaica, West Indies, studying both secular and religious topics. He

earned a Certificate "Associate of Science in Business Administration" in May 1996. He subsequently earned a Bachelor of Arts in Religion dated 16 May 1999, from Northern Caribbean University (formerly West Indies College). The petitioner also submitted a Certificate of Ordination as Deacon dated January 11, 1997, and a Certificate of Ordination as an Elder dated December 1, 2001. The petitioner states, in his letter of October 15, 2002, that the beneficiary is "a fully trained, qualified and authorized Minister of the Seventh-day Adventist Church, having obtained a Bachelor of Arts degree in Religion ... which fulfills the professional requirements for performing the role of Minister within this denomination."

As the petitioner is an authorized official of the religious organization in the United States, this statement is in compliance with the requirements of 8 C.F.R. § 204.5(m)(3)(ii)(B). The petitioner has established that the beneficiary is a minister of religion.

In this case, the evidence of record reflects that the petitioner has not established that, during the two years immediately preceding the filing of the petition, the beneficiary was continuously engaged as a minister of religion.

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.