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

CI

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[REDACTED]

File: [REDACTED]
WAC 01 285 52562

Office: CALIFORNIA SERVICE CENTER

Date: **DEC 13 2003**

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

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:
[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 Citizenship and Immigration Services (CIS) 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.

Cindy M. Soney for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California 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 "Director of Religious Education." The director determined that the petitioner did not establish that the beneficiary is qualified to engage in a religious vocation or occupation.

On appeal, counsel asserts that the director erroneously applied a requirement that the beneficiary must hold a bachelor's degree to qualify as a Special Immigrant Worker. Counsel also asserts that the proffered position of the petitioner does not require that the beneficiary possess a baccalaureate degree as she would not be working in a professional capacity, but rather would be working in the category of a "religious occupation" related to a traditional religious function.

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

The sole issue raised by the director to be addressed in this proceeding is whether the petitioner established that the beneficiary is qualified to engage in a religious vocation or occupation.

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, 2008, 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, 2008, 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 Revenue 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 August 27, 2001. Therefore, the petitioner must establish that the beneficiary was engaged continuously as a religious worker from August 27, 1999 until August 27, 2001. The petitioner indicated on the Form I-360, Petition for Amerasian, Widow or Special Immigrant, that the beneficiary entered the United States on December 25, 1986. The petitioner listed the beneficiary's current status as R-1, authorized until September 1, 2000. The petitioner noted on the Form I-360, that the beneficiary has worked in the United States without permission, but did not attach the required explanation.

The petitioner indicated that the beneficiary attended Young Nak Women's Seminary, at 667 Sangsung-Ri, Jungbu-Myon, Kwangju-Kun, Kyongki-Do, Korea, from March 1978 through February 1981. The President of the Seminary certified that the typed course listing is true and correct as compared with the original transcript. The record contains a "Certificate of Employment" from DongSung Presbyterian Church, 216-29 Janggan 1 Dong, Dongdaemungu, Seoul, Korea, which indicates that the beneficiary served as "Education Minister" from January 1, 1978 to June 30, 1984. The letter does not provide information as to the hours, duties and any remuneration the beneficiary received. It is noted that the dates of attendance at the seminary overlap with the dates of work at the DongSung Presbyterian Church. Counsel states that: "[p]rior to graduating from Young Nak Women's Seminary, the beneficiary served as Education Minister (Non-Ordained) with the DongSung Presbyterian Church." The petitioner does not elaborate further on the work performed while the beneficiary was a student at seminary, or changes in her work after receiving the diploma. The beneficiary's additional training is reflected in the transcript for two semesters of study, from September 1996 through May 1997, at California Ezra Bible Academy, of 2301 Miramar Avenue, San Leandro, California, the same address as the petitioner.

The petitioner submitted a letter dated July 9, 2001, verifying that the beneficiary has worked as "Director of Religious Education since October 1997 to the present." The petitioner indicated the beneficiary's salary as \$33,280 per year and noted her duties. In response to the director's request for additional evidence, the petitioner, through counsel, in a letter dated May 21, 2002, elaborated on the hours spent by the beneficiary on various aspects of her duties. This letter indicates that initially the beneficiary was paid \$15,600 a year for full-time work as (the Director of

Religious Education, and beginning in the year 2000, her salary was increased to \$33,280, for the same position.

The director's decision discusses a definition in the Occupational Outlook Handbook, U.S. Department of Labor, 1998-1999 Edition, and concludes, in pertinent part that: "... the petitioner has not established that the beneficiary has an [sic] U.S. baccalaureate degree or its foreign equivalent for entry into the religious profession."

On appeal, counsel states:

Accordingly, the principal issue is not whether the beneficiary holds a bachelor's degree but whether the proffered position would qualify as a 'religious occupation' or a 'religious vocation.' We would assert that the proffered position of Director of Religious Education is a 'religious occupation'... Accordingly, the requirement that the beneficiary hold a bachelor's degree is not necessary because the category in which this position falls under [sic] does not require a bachelor's degree.

The letters of the petitioner do not indicate that the position is considered as that of a professional capacity or that a bachelor's degree is required. Counsel is accurate in stating that for this petition, this position would fall under the category of a religious occupation, and a baccalaureate degree would not be required for a position that is a religious occupation. Therefore, this portion of the director's decision is withdrawn. However, the petitioner has not provided sufficient evidence to establish that the beneficiary is qualified to engage in a religious vocation or occupation.

In a letter dated May 21, 2002, counsel asserts that the petitioner submitted "evidence which substantiates that the beneficiary served full time as the Director of Religious Education for the petitioning church during the two year period immediately proceeding the filing of this I-360 petition," in the form of copies of the beneficiary's 1999, 2000, and 2001 income tax returns. It is noted, however, that the beneficiary's Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return, for 2001, 2000, and 1999, are unsigned by the beneficiary and indicate, under "Your Occupation," the title of "Associate Pastor," and in the column marked "Payments", (items 59-66), denote "Clergy" next to the amount of salary.

The record contains an undated document entitled "Tax Status and Requirements of Local Churches, Church of the Nazarene," by Jack Stone, General Secretary of the General Board of the Church of the Nazarene, indicating that churches that hire "non-ordained employees (office secretary, custodians, etc.) and District Licensed laymen, must withhold income tax..." The document further states that, "Churches need not withhold income tax or social security from ordained or district-licensed ministers, pastors, evangelists, and other clergy who perform full function of the ministry, including administering the sacraments. Such persons are considered self-employed for social security purposes and must file estimated tax returns and pay estimated taxes quarterly on Form 1040ES." It is noted that the beneficiary's tax forms include the IRS Form Schedule SE (Form 1040), Self-Employment Tax.

The beneficiary's IRS Forms W-2, Wage and Earnings Statement, for the years 2001, 2000, and 1999, indicate that the petitioner has paid the beneficiary the stated salary. However, the submitted documentation does not establish that the beneficiary was paid for services as the "Director of Religious Education." The "Verification of Employment" letter from the petitioner, dated July 9, 2001, states that the "Director of Religious Education" position "was formerly entitled 'Evangelist,'" at some unstated point in the past. The submitted documentation raises the question of the beneficiary's title and duties for the petitioner, and whether her qualifications would match any or all of the positions she is stated to have occupied. It is further noted that the record does not contain a description of the training and qualifications that must be met in order to fulfill the duties of the position, or that the beneficiary has met those standards. The record does not establish that the duties of an "Evangelist" and "Director of Religious Education" are the same, nor does the record explain how either of these titles relates to the title and duties of "Associate Pastor," as is listed on the beneficiary's tax forms. Therefore, the petitioner has not established that the beneficiary is qualified to perform the religious vocation or occupation, and the petition must be denied.

Beyond the decision of the director, the petitioner has not established that the beneficiary's activities for the petitioner require any religious training or qualifications. The description of duties for the proffered position as stated in the petitioner's letter dated May 21, 2002, indicates that the beneficiary:

Developed and managed programs designed to promote religious education (15 hours per week). She also planned, organized and directed religious education programs for

students in Sunday School and youth groups (6 hours per week). She also taught Bible and Christian life and behavior (5 hours per week) and oversaw Sunday School recreation activities (2 hours per week). Moreover, she instructed persons seeking conversion to the faith (2 hours per week), visited sick persons and shut-ins (5 hours per week), and provided spiritual counsel to the needy and bereaved (5 hours per week).

The record does not contain documentation to substantiate the education and training required in order to carry out the duties of the proffered position, and show that the beneficiary has met those standards. The petitioner asserts that a professional capacity is not required, but has not provided documentation to establish what is required for the position, and, as discussed earlier, has not made clear the exact position that has been held by the beneficiary. In reviewing the description of the duties of the position, it is noted that a majority of the duties described would appear to be secular in nature. Developing, managing, directing and overseeing religious education programs have not been shown to require particular religious training.

Another issue not raised by the director is that the petitioner has not established that it has had the ability to pay the beneficiary the proffered wage since the filing date of the petition, in accordance with 8 C.F.R. § 204.5(g)(2), which states, in pertinent part:

Ability of prospective employer to pay wage. 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

In this case, through submission of the beneficiary's individual tax forms, the petitioner has established that it has paid the beneficiary in the past. The petitioner, has otherwise, however, submitted only bank statements, and a grant deed, but has not submitted annual reports, federal tax returns, or audited financial statements, in accordance with the above regulatory provision.

The final issue not reviewed by the director that will be discussed in this proceeding involves whether the beneficiary was a member of the petitioner's religious denomination during the two-year period preceding the filing date of the petition. The petitioner asserts that the beneficiary has been in its employ since October 1997. It is noted that the petitioner is a Church of the Nazarene affiliated with the General Board of the Church of the Nazarene. The beneficiary's past work experience is with the Dongsung Presbyterian Church in Korea. The record does not reflect when and by what methods the beneficiary became recognized as a member of the Church of the Nazarene. This may have particular relevance if the beneficiary is working as an Associate Pastor, as is stated on the tax returns.

In reviewing an immigrant visa petition, CIS must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.