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

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



File:



Office: VERMONT SERVICE CENTER

Date:

DEC 18 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:



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. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the Vermont Service Center and is now before the Administrative Appeals Office (AAO) 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), to employ him as a worship director. The director determined that the petitioner had not established that the proffered position qualified as that of a religious worker. The director further determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

On appeal, counsel submits a statement. Counsel indicated that a brief and additional evidence would be submitted within 30 days of the filing date of the petition. To date, no brief or evidence has been received. Therefore, the record must be considered complete.

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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

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.

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 raised by the director is whether the proffered position qualifies as that of a religious worker.

Pursuant to 8 C.F.R. § 204.5(m)(2), the term "religious occupation" is defined as follows:

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.

The statute is silent as to 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," but instead provides a brief list of examples. A review of 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. The non-qualifying positions are those that are primarily administrative or secular in nature, such as janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The AAO 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.

The petitioner describes the duties of the proffered position as follows:

[The beneficiary] will be required to provide counseling services, religious services, and social services according to the tenets of our pentecostal beliefs.

The petitioner provided the following description of the beneficiary's weekly schedule:

Tuesday:

11a.m. - 1p.m. Projects Planning & Administrative Tasks
1p.m. - 2p.m. Lunch
2p.m. - 4p.m. Religious Counseling
4p.m. - 7p.m. Prayer Meeting

Wednesday

9a.m. - 10a.m. Staff Meeting
10a.m. - 1p.m. Prepare Bible Study
1p.m. - 2p.m. Lunch
2p.m. - 5p.m. Prepare Bible Study

Thursday

9a.m. - 10a.m. Staff Meeting
10a.m. - 1p.m. Choral Arrangements
1p.m. - 2p.m. Lunch
2p.m. - 5p.m. Teach Bible Study

Friday

9a.m. - 10a.m. Staff Meeting
10a.m. - 1p.m. Projects Planning & Administrative Tasks
1p.m. - 2p.m. Lunch
2p.m. - 5p.m. Finalize weekend service arrangements

Saturday

9a.m. - 10a.m. Staff Meeting
10a.m. - 1p.m. Religious Counseling
1p.m. - 2p.m. Lunch
2p.m. - 5p.m. Rehearsals for weekend service.

On appeal, counsel asserts that the church's by-laws explain the "religious content" of the occupation and the religious education required for the position. It was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence. Counsel indicates that evidence to corroborate his assertion would be submitted with a brief within 30 days of the filing date of the appeal. To date, no such evidence has been received by CIS.

The petitioner has not provided sufficient evidence to demonstrate that the position is a traditional religious function within the religious organization; that the duties of the position are directly related to the beliefs of the religious organization; that the position is defined and recognized by the governing body of the religious organization; or that the position is traditionally a full-time, salaried position within the religious organization. The duties of the position are those normally performed by an active member of a religious congregation, rather than those that would normally be performed by a salaried employee who completed training in preparation for a career in religious work. It is concluded that the petitioner has not shown that the proffered position qualifies as a religious occupation, and the petition must be denied for this reason.

The second issue raised by the director is whether the petitioner has shown that the beneficiary was engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

The petition was filed on May 3, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from May 3, 1999 until May 3, 2001.

The petitioner states that the beneficiary served as a Worship Director at an affiliated church in Tema, Ghana, from 1995 to 1998. The petitioner indicates that the beneficiary's duties during that period included assisting with preaching of the gospel, conducting worship services, and helping with healing and deliverance. The petitioner has not provided any information regarding the beneficiary's work experience during the two-year

qualifying period ending May 3, 2001, nor has the petitioner provided any evidence to establish that the beneficiary was serving the church as a religious worker during that period. Therefore, it is concluded that the petitioner has not provided sufficient evidence to establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition, and the petition must also be denied for this reason.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified for a religious worker position within the religious organization. Although the petitioner has provided a certificate indicating that the beneficiary was ordained as a minister by Bethel Prayer Ministries International on September 4, 1995, the petitioner has not provided a letter from an official of the denomination setting forth the denomination's requirements for ordination as a minister and how the beneficiary satisfied those requirements. The petitioner has not submitted any evidence showing that the beneficiary completed any training that qualified him to serve as a religious worker. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

In reviewing an immigrant visa petition, the AAO 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).

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.