

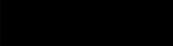
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

JUL 16 2003

File:  Office: VERMONT SERVICE CENTER

Date:

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

The petitioner is a church, seeking 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 deacon.

The director denied the petition, finding that the beneficiary's volunteer work with the petitioner was insufficient to satisfy the requirement that he had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submits a brief, additional evidence and resubmits all previously provided documentation.

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 petitioner in this matter is a church. The beneficiary is a 58-year old male citizen of Brazil. The record of proceeding is silent as to the size of the size of the petitioner's congregation. It submitted evidence that it has the appropriate tax exempt recognition. The beneficiary entered the United States as a B-2 visitor for pleasure on January 23, 1999.

At issue in this proceeding is whether the beneficiary had been continuously carrying on a qualifying religious occupation for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m) (1) states, 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 July 12, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the religious occupation since at least July 12, 1999.

The petitioner submitted a letter from its head elder stating that the beneficiary "shall work 35 hours per week and will be reimbursed for expenses which occur during the course of the duties as deacon." In a separate letter, the head elder wrote that the beneficiary had been receiving shelter, food, transportation and cash or checks as a form of reimbursement and/or compensation for the services he provided to the petitioning church. In a third letter, a senior elder wrote that the petitioning church pays for any and all expenses that the beneficiary might have during his missionary trips.

The director concluded that a claim of voluntary service to one's church was insufficient to satisfy the requirement of having been continuously engaged in the religious occupation for the preceding two years.

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. 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 persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify.

Here, the petitioner clearly states that the beneficiary is not paid a salary. Counsel for the petitioner argues that there is no requirement that the experience must be salaried in order to qualify. Counsel also cites a New York District Court decision

that is not binding on the AAO in the instant case. Counsel's argument is not persuasive. In the absence of certified tax returns and W-2 Forms (or Forms 1099), the petitioner has failed to establish that the beneficiary has the two years of requisite qualifying experience.

The petitioner submitted a letter that states that the beneficiary is being accepted as a deacon by the petitioning church. The wording of the letter would indicate that he was not previously employed in that position. Evidence submitted on appeal and purported to be evidence of remuneration to the beneficiary dates from January 1997 to December 1998 in Brazil, and from no earlier than September 2001 in the United States. There is no evidence of remuneration or support for services rendered covering the period from January 23, 1999, the date of the beneficiary's admission to the United States as a visitor, to July 12, 2001, the filing date of the petition. The evidence is insufficient to establish that the beneficiary was employed on a full-time salaried basis continuously for the two years immediately preceding the filing of the petition.

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.