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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

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: JUL 23 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:

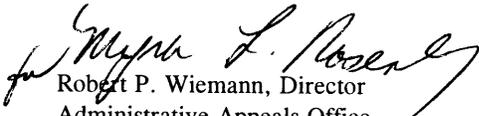
INSTRUCTIONS:

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 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 Vermont Service Center Director denied the petition on February 5, 2001. An appeal was rejected by the Administrative Appeals Office (AAO) on January 7, 2002; and, a subsequent motion to reopen was dismissed on July 18, 2002. The matter is again before the AAO on motion to reconsider. The motion to reconsider will be granted. The previous decision of the center director, dated February 5, 2001, denying the petition will be affirmed.

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 her as an education outreach worker.

The director denied the petition, finding that the beneficiary's volunteer work with the petitioner was insufficient to satisfy the requirement that she 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 asserts that the petitioner seeks to employ the beneficiary in a new capacity.

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 affiliated with the Presbyterian denomination. The beneficiary is a native and citizen of Jamaica. The petitioner submitted evidence that it has the appropriate tax exempt recognition. The beneficiary last entered the United States as a B-2 nonimmigrant visitor for pleasure on October 31, 1999.

At issue in this proceeding is whether the beneficiary had been continuously carrying on a 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 August 25, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least August 25, 1998.

Initially, the petitioner submitted a letter from its minister stating that the beneficiary had volunteered as a counselor in the petitioning church's summer day camp. The petitioner submitted a copy of the beneficiary's resume that indicates that she had worked in the after school and summer camp of the New Testament Church of God between September 1997 and 1999. In response to the director's request for additional evidence, the petitioner submitted a letter from the Vice Principal of the [REDACTED] Baptist High School in the Bahamas stating that the beneficiary had been employed as a social studies and economics teacher.

The director determined that the evidence was insufficient to establish that the beneficiary had been continuously engaged in a religious occupation for the preceding two years. The AAO concurs.

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.

Here, the letter from the petitioning church does not state the average amount of time the beneficiary devoted to her volunteer duties, or at the New Testament Church of God.

In any event, the Bureau interprets continuous to mean full-time and salaried.

On appeal, counsel for the petitioner argues that the petitioner seeks to employ the beneficiary in a new position, rather than in her former volunteer capacity. The petitioner further asserts that the beneficiary has the two years of experience in a religious occupation by virtue of her employment as a social studies and economics teacher in the Bahamas.

In review, the petitioner failed to overcome the director's objection to approving the petition. The regulations require two years of continuous experience in the same position for which special immigrant classification is sought. 8 C.F.R. § 204.5(m)(1). Here, the petitioner expressly states that it seeks to employ the beneficiary in a new capacity.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary had been a member of the same denomination for the two years preceding the filing of the petition as required by 8 C.F.R. § 204.5(m)(3)(ii)(A). The petitioner informed the Bureau that the beneficiary had been a member of the Methodist denomination. Given that the appeal will be dismissed on the grounds discussed above, this issue will not be discussed further.

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 decision of the center director, dated February 5, 2001, denying the petition is affirmed.