

PUBLIC COPY

**identifying data deleted to
prevent disclosure of unwarranted
invasion of personal privacy**

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

CJ

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

[REDACTED]

File: EAC 01 194 50661 Office: VERMONT SERVICE CENTER Date: **JUN 27 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 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

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. It seeks classification of the beneficiary as a special immigrant minister 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 an assistant pastor at a weekly salary of \$250.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been engaged continuously in a qualifying occupation or vocation on a full-time basis for two full years immediately preceding the filing of the petition or that the position qualifies as that of a religious worker.

On appeal, counsel for the petitioner asserts that the beneficiary meets the definition of minister; hence, his job qualifies as that of a religious worker. Counsel further asserts that the beneficiary has been working as an ordained minister in the Pentecostal Church since his ordination on November 29, 1997.

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 Pentecostal church. The beneficiary is described as a native and citizen of Nigeria who last entered the United States on November 13, 1999 as a B-1 nonimmigrant visitor for business.

The record of proceeding contains the petition and supporting documents, a request for additional evidence and the petitioner's response, the director's decision and appeal documents.

The first issue to be reviewed in this proceeding is whether the petitioner established that the beneficiary has been engaged continuously in a qualifying occupation for the two years immediately 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.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

The petition was filed on May 26, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the occupation of a minister since at least May 26, 1999.

In this case, an official of the petitioning church wrote the Bureau that the beneficiary founded Born in Christ Church of God in Nigeria in 1988 and was ordained in 1997. The official further wrote that the beneficiary has "continuously performed the duties of a minister since his ordination." The officer states that the beneficiary attended a Christian leadership conference in Dallas, Texas in November 1999, then:

continued his Pentecostal ministry with God's Family Church in Providence, Rhode Island where he served as Assistant Pastor until October of 2000. In October he became Assistant Pastor of Christian Powerhouse Ministry where he continues to conduct worship services, preach

the Gospel, lead prayer services, counsel those in need, teach bible studies and other ministerial duties.

In an attachment to the I-360 petition, the petitioner indicated that the beneficiary had worked in the United States without permission as a minister and holding temporary jobs.

In a request for additional evidence, the director requested that the petitioner submit evidence that the beneficiary has the continuous two years fulltime experience in the religious vocation, professional religious work or other religious work for the period immediately prior to May 26, 2001. The director specifically requested that the petitioner provide signed statements from the beneficiary's former and current employers regarding the commencement and termination dates of his employment. In response, an official of the petitioning church wrote a letter to the Bureau that did not provide the beginning and ending dates of the beneficiary's employment. The petitioner indicated that the beneficiary had worked as a minister at the church he founded in Nigeria and that after the beneficiary came to the United States to attend a leadership conference, he was invited to become an assistant pastor at God's Family Church in Providence, Rhode Island. The official further stated that the beneficiary terminated his position at God's Family Church in October 2000 and took a similar post at the Christian Powerhouse in November 2000.

In review, the evidence is insufficient to establish that the beneficiary has the two years of continuous qualifying experience. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating evidence such as certified tax documents, the Bureau is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

The next issue to be reviewed in this proceeding is whether the petitioner established that the proffered position is a qualifying religious occupation. On appeal, counsel for the petitioner states that the director erred in requiring the petitioner to establish that the proffered position is a qualifying religious occupation because the petitioner seeks to employ the beneficiary as a minister. This portion of the director's decision shall be withdrawn.

Beyond the director's decision, the petitioner has not established that the beneficiary is qualified as a minister as defined in the pertinent regulations. Here, the petitioner provided the Bureau with a certificate of ordination and an honorary degree issued by the God's Power Bible College in Ibadan, Nigeria. In order to establish that an alien is qualified as a minister of religion for the purpose of special immigrant classification, simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an

alien is entitled to perform the duties of a minister. *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). Since the appeal will be dismissed for the reasons stated above, this issue need not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.