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Bureau of Citizenship and Immigration Services

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



File: WAC-01-218-51902

Office: California Service Center

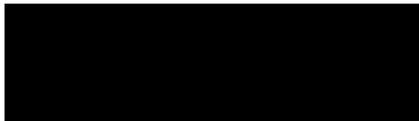
Date: **MAY 14 2003**

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:



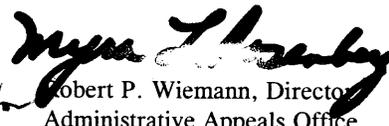
INSTRUCTIONS:

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 immigrant visa petition was denied by the Acting Director, California Service Center. The matter is now before the Administrative Appeals Office 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 perform services as a preacher and director of religious education.

The petition was denied on the grounds that the petitioner failed to establish that the beneficiary was continuously carrying on a full-time religious occupation for at least the two years preceding the filing of the petition pursuant to 8 C.F.R. 204.5(m)(1).

On appeal, counsel for the petitioner submits a brief arguing that the regulations do not require that the prior experience have been in a paid capacity. Counsel asserts that the beneficiary is qualified as a preacher.

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).

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.

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

At issue is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petitioner is the [REDACTED] which was established in the State of California on October 4, 1978, and has a congregation of 250 members and a single employee. The petition was filed on April 26, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a pastor from April 26, 1999 until April 26, 2001. The record indicates that the beneficiary last entered the United States as a B-2 visitor on October 18, 1998. The petitioner submitted a copy of Form I-797A, Notice of Action, reflecting approval of the beneficiary's application for change of status to that of an F-1 student on July 20, 1999. The petition, Form I-360, indicates that the beneficiary has never been employed in the United States without permission.

8 C.F.R. § 204.5(m) (3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two

years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

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 this case, the petitioner provided a letter dated January 1, 2002 from [REDACTED] who indicated that from January 1999 to December 2000, the beneficiary worked full-time at the [REDACTED] in Buena Park, California as an "unordained" preacher and director of religious education and instructor. The petitioner also provided a letter dated January 5, 2002 indicating that since January 2001, the beneficiary has been working at the petitioning church located in Anaheim, California as an unordained preacher and director of religious education.

In response to a request for additional evidence, the petitioner described the beneficiary's duties at the Korean Logos Church as follows:

Conducting religious worship and perform other spiritual functions associated with beliefs of The [REDACTED] Lead congregation in songs and worship service, provided spiritual and moral guidance. Prepared and delivered

sermons and talks. Visited the sick and assist members. Did in the ministry [sic] of "helps" distributing food, clothing etc. to the poor. Involved in Sunday School and Youth groups.

The petitioner also described the duties of the beneficiary at the [REDACTED] as follows:

Conducting religious worship and perform other spiritual functions associated with beliefs of The [REDACTED] Will lead congregation in songs and worship service, provide spiritual and moral guidance. Prepare and deliver sermons and talks. Will visit the sick and assist members. Do in the ministry [sic] of "helps" distributing food, clothing etc. to the poor. Will be involved in Sunday School and Youth groups. Also develop, organize religious program, education to church members. Creates religious study courses and program, provide spiritual counseling & guidance. Also teaching associated staff.

The petitioner asserted that the beneficiary was supported by his wife and a scholarship from the petitioning church. The petitioner listed the beneficiary's salary from April 26, 1999 through December 2000 as "\$1,200.00 per month (as scholarship)" and from January 2001 to the present as "\$1,500.00 per month (as scholarship)." The petitioner, however, has failed to submit any evidence to corroborate its claim that the beneficiary was compensated in the form of a scholarship. Absent a detailed description of the beneficiary's employment history during the two-year period supported by corroborating documentation such as tax documents, the Bureau is unable to conclude that the beneficiary has been engaged in any particular occupation, religious or otherwise.

Informal employment with compensation in the form of a "scholarship" is insufficient to satisfy the requirement of "continuously carrying on" a religious occupation. The plain meaning of the term "occupation" is an individual's primary endeavor and means of financial support. Documentation provided by the petitioner reflects that the beneficiary was granted a change of nonimmigrant status to that of an F-1 student during the two-year period. As such, the beneficiary's occupation during the two-year period, would be considered that of a student rather than a religious worker and, therefore, does not satisfy the two-year experience requirement.

The petitioner indicated that there was no legal relationship between the [REDACTED] and the [REDACTED] but each church is closely related in terms of its religious beliefs and practices. As there is no affiliation between the churches and no documentation was provided by an authorized

official of the [REDACTED] detailing the beneficiary's duties, the petitioner cannot attest to the beneficiary's alleged duties from April 26, 1999 through December 2000.

The petitioner provided documentation indicating that the beneficiary attended the Logos Council School of Theology, Seoul, Korea, and that he graduated with a Bachelor's degree in Theology on February 17, 1991. The petitioner also provided a "Certificate of Career" without an appropriate letterhead which certified the beneficiary's period of career from January 1992 through December 1999 in the Logos Council. These documents, however, hold no evidentiary weight as they were neither certified to be a true and accurate translation nor accompanied by the documents in its original language. Merely going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In evaluating a claim of prior work experience, the Bureau must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for active members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, control of time, and delegation of duties on an unpaid volunteer as it could on an employee. Nor is there any means for the Bureau to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For these reasons, the Bureau holds that lay persons who perform volunteer activities are not engaged in a religious occupation and that their voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

The petitioner has failed to establish that the beneficiary was continuously carrying on a religious occupation for the two-year period. For this reason, the petition may not be approved.

Beyond the discussion of the director's decision, the petitioner has failed to establish that it has the ability to pay the proffered wage pursuant to 8 C.F.R. § 204.5(g)(2). As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

In reviewing an immigrant visa petition, the Bureau 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.