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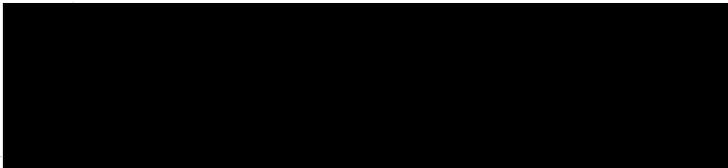
**U.S. Department of Homeland Security**

Citizenship and Immigration Services

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CI

ADMINISTRATIVE APPEALS OFFICE  
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Washington, D.C. 20536



File: [Redacted] Office: VERMONT SERVICE CENTER

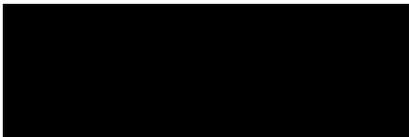
Date: **NOV 17 2003**

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as an associate pastor. The director determined that the petitioner failed to establish that: (1) it is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986; (2) the position offered to the beneficiary requires specific religious training, and that the beneficiary possesses such training; (3) the beneficiary worked continuously in the position during the two years immediately prior to the filing of the petition; and (4) the petitioner is financially able to pay the salary offered to the beneficiary.

On appeal, the petitioner submits new documents and copies of some previously submitted materials.

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 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 regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner must either provide verification of the church's individual exemption from the Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS. Such documentation to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 includes a completed Form 1023, a completed Schedule A attachment, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The petitioner's initial submission includes a copy of its Exempt Organization Permit from the State of New Jersey Division of Taxation, indicating that the petitioner is "exempt from all sales and use taxes applicable to purchases of tangible personal property and services." The director instructed the petitioner to submit evidence of exemption from federal income tax. In response, the petitioner has submitted further documentation of its exemption from state sales and use tax.

The director denied the petition, partly on the basis of the petitioner's failure to submit evidence of federal tax-exempt status or eligibility for such status. The director noted that the petitioner's previous submissions addressed only state taxes. On appeal, the petitioner submits yet another copy of its state exemption certificate, which the director had already determined to be insufficient to establish the required federal exemption.

The petitioner also submits a letter from the moderator of the New Jersey Presbytery of the Korean Presbyterian Church in America, who asserts that the petitioning church has been a member of that body "since 1997." The record does not contain evidence regarding the New Jersey Presbytery's tax exempt status or any documentation to specifically include the petitioning church within the larger organization's exemption.

Another issue in this proceeding is whether the petitioner has offered the beneficiary a qualifying position. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States.

The regulations at 8 C.F.R. § 204.5(m)(2) contain the following pertinent definitions:

*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.

*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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on 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" and instead provides a brief list of examples. 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. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

CIS 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.

Rev. [REDACTED] pastor of the petitioning church, describes the beneficiary and his work for the petitioner:

[The beneficiary] graduated from Joong Ang General Assembly Presbyterian Theological Seminary with outstanding grades in Korea. He furthered his education in Theological Seminary for another 2 years at the same location and then he was duly ordained. . . . [The beneficiary] has been voluntarily servicing at our church with such dedication. Therefore, we are seeking to officially employ [the beneficiary] as an Associate Pastor on a full time basis where he will be appointed the following duties:

Planning, organizing, and directing religious education program . . . ; assisting Pastor in providing spiritual guidance, prayer and counseling to church young adult members; serving as a counselor to students . . . ; compiling lists of absent church members such as education directors, ministers and instructors to receive updates on activities, concerns, and new suggestions; and preparing or conduct[ing] all the worship services.

While the petitioner refers to the beneficiary as an ordained minister, the above description and a weekly schedule in the record do not indicate that the beneficiary has been, or will be, performing the full range of duties of authorized clergy. The beneficiary's duties, therefore, do not appear to be those of a minister as the regulations define that term. The petitioner's initial submission contained no indication as to the minimum requirements for the position of associate pastor.

In response to a request for further evidence, the petitioner has submitted a copy of its bylaws. Article 31 indicates that a candidate for pastor or associate pastor must be "[a] person who finished [a] regular theological program . . . and meets qualifications within the rules and regulations of the church." The record does not specify these latter qualifications, but it is clear that the petitioning church requires theological training of its associate pastors.

The director found that the petitioner has not established that the position of associate pastor is a qualifying religious occupation. On appeal, the petitioner submits a list of positions at the church, along with the qualifications and duties of each. The document indicates that the position of associate pastor requires a graduate of a theological seminary and a "Duly Ordained Pastor with at least 3 years experience." The petitioner had previously submitted copies of documentation of the beneficiary's seminary training; further copies of these same documents accompany the appeal.

The documentation submitted by the petitioner indicates that the petitioner does indeed have significant educational requirements for associate pastors. A theological degree represents a degree of education or training beyond what volunteer members of the congregation typically possess. The record shows that the beneficiary was employed in the same position for over five years in Korea, as attested by an official church body there. This evidence appears to be sufficient to establish that the denomination considers the position of associate pastor to be a *bona fide* religious occupation rather than a duty routinely assigned to volunteers from the congregation.

The next issue concerns a requirement listed in the regulation at 8 C.F.R. § 204.5(m)(1) which states, in pertinent part, that the "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 April 13, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as an associate pastor throughout the two-year period immediately preceding that date. The beneficiary entered the United States on August 3, 1999, and thus the beneficiary was outside the United States for roughly the first four months of the qualifying

period. The petitioner's initial submission dealt primarily with the beneficiary's future duties, but did contain a certificate indicating that the beneficiary "had been officially appointed as a Minister for education department by The General Assembly of Presbyterian Church in Korea." The director requested detailed evidence regarding the beneficiary's past work during the two-year qualifying period. The director specifically requested statements from the churches where the beneficiary had worked.

In response, Rev. Heo states that the beneficiary "served as a pastor for 5 years and 3 months at Presbyterian Church in Korea." A certificate from the General Assembly of Presbyterian Church in Korea indicates that this period spanned from March 5, 1992 to June 30, 1997. The certificate is a "form" document with spaces for five different appointments, but four of the five spaces are blank, implying that the 1992-1997 period is the beneficiary's only employment as a pastor for the denomination in Korea. This period falls entirely outside the two-year qualifying period, which began in mid-April 1999. The record is silent as to the beneficiary's employment, if any, from July 1, 1997 through August 2, 1999.

Rev. Heo states that the beneficiary "came to the USA on August 3, 1999 and has been volunteering for small churches in the New Jersey and New York area," but the petitioner does not identify these churches or provide any documentation from them. Rev. Heo asserts that the beneficiary "had been working as a part-time volunteer pastor for the church from October 1999, and became [the] church's Associate Pastor and an employee in 2001." Thus, the petitioner indicates that the beneficiary worked only part-time for most of the 1999-2001 qualifying period.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress. In this case, the petitioner has expressly stated that, for most of the two-year qualifying period, the beneficiary worked part-time as a volunteer.

The final issue raised by the director concerns the petitioner's ability to pay the beneficiary's salary. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Rev. Heo states "[w]e intend to pay [the beneficiary] from \$19,200 to \$24,000 annually." The petitioner submits a copy of a bank statement dated January 31, 2001, reflecting a balance of \$9,983.09. The petitioner also submits a financial statement reflecting \$167,608.00 in receipts during 2000, \$8,566.31 remaining from 1999, and expenses totaling \$145,500.13, leaving a total remainder of \$30,674.18. There is no indication that this financial statement was prepared in conjunction with an audit of the church's finances. In response to a request for further documentation, the petitioner has submitted copies of subsequent bank statements, the most recent of which reflects a balance of \$19,959.15 as of December 31, 2001.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The petitioner's bank statements do not provide a complete, reliable picture of the petitioner's financial status. For instance, they do not disclose the beneficiary's current liabilities.

The director, in the notice of denial, stated that the petitioner had failed to establish its ability to pay the beneficiary's salary. On appeal, the petitioner does not submit any new financial documentation or otherwise address the director's finding.

In sum, while the petitioner has submitted some persuasive evidence regarding the occupation of associate pastor, the petitioner has failed to overcome several other findings, any one of which by itself would be sufficient to warrant denial 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.