

PUBLIC COPY

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

CI

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

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



File:  Office: CALIFORNIA SERVICE CENTER

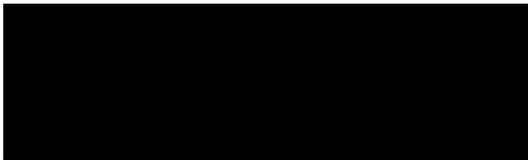
Date: **NOV 19 2003**

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 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.

Cindy M. Gomez for
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 on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner 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), in order to perform services as an unsalaried pastor.

The director determined that the petitioner had failed to establish that the beneficiary had been continuously employed in a qualifying religious occupation for the two years immediately preceding the filing date of the petition. The director further determined that the petitioner failed to establish that it is a bona fide religious organization. Finally, the director determined that the petitioner had not established the ability to pay the beneficiary an annual salary.

On appeal, counsel submits a letter and additional documentation addressing the director's concerns.

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 petitioner in this matter is described as an evangelical church. The size of its congregation and number of employees is not noted in the record.

The beneficiary is a native and citizen of Chile who last entered the United States as a nonimmigrant visitor for pleasure (B-2) on October 11, 2000, with permission to remain until April 11, 2000. The record reflects that the beneficiary has remained in the United States in unlawful status since the expiration of his authorized period of admission. The Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, indicates that the beneficiary has not been employed in the United States without permission.

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

The first issue to be addressed in this proceeding is whether the petitioner has established that it is a qualifying religious organization.

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

(i) Evidence that the organization qualifies as a nonprofit 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; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

On appeal, counsel for the petitioner provides a letter from the Internal Revenue Service (IRS) indicating that "Community Bible Fellowship," located at 1513 Whitty Road, Toms River, New Jersey, was granted exemption under section 501(c)(3) of the Internal Revenue Code (IRC) on January 31, 1975. However, there is no documentation contained in the record to confirm that the petitioner, located at 320 Compass Avenue, Beachwood, New Jersey, is the same organization as the one granted federal tax exemption by the IRS. The petitioner has, therefore, failed to establish that it is a qualifying religious organization. For this reason, the petition may not be approved.

The second issue for consideration is whether the beneficiary has been engaged in a religious vocation or occupation for the two years immediately preceding the filing date of the petition.

The regulation at 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 April 27, 2001. Therefore, the petitioner must establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation since at least April 27, 1999.

On appeal, Pastor Conover states:

We as the petitioning church would like to address the salary issue that [the director] has raised. Each of the pastors in Community Bible Fellowship in both the American and Hispanic congregations is self-employed. None of us receives a salary. . . . [The beneficiary] understands this and believes that God will meet his needs without the guarantee of a fixed income as he serves the growing congregation he is building and in which he invests more than full-time hours as a servant of God in his Kingdom.

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. 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 or 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 or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963); *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 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 or 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 be otherwise would be outside the intent of Congress.

As the petitioner indicates that the beneficiary is self-employed in a secular job and performs services for the petitioner on a volunteer basis, the petitioner has failed to establish that the beneficiary has been continuously employed in a full-time salaried religious vocation or occupation for the relevant two-year period. For this reason as well, the petition may not be approved.

The third issue to be addressed is whether the petitioner has demonstrated its ability to pay the beneficiary a salary.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

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 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 annual reports, federal tax returns, or audited financial statements.

Here, the petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements that are current as of the date of filing the petition. Therefore, the petitioner has not satisfied this documentary requirement. For this reason as well, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to satisfactorily establish that: (1) it has tendered a job offer with terms of remuneration to the beneficiary; (2) the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification; and (3) the beneficiary is qualified to perform the duties of the position. Since the appeal will be dismissed on the grounds noted above, these issues need not be examined further at this time.

In reviewing an immigrant visa petition, the AAO 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 beneficiary in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of B. 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.