

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, DC 20536



NOV 22 2003

File: WAC 00 218 54080

Office: CALIFORNIA SERVICE CENTER

Date:

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 N. Gomez for  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner seeks classification 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 "Minister". The director determined that the petitioner had not established that she is qualified for the position within the religious organization as a minister of religion.

The I-360 petition indicates that the Church of Consciousness, San Francisco, California, is the petitioner. The I-360 petition, however, is signed by [REDACTED]. Therefore, the Church of Consciousness cannot be considered as having filed a petition on behalf of Ms. [REDACTED] and Ms. [REDACTED] shall be considered the petitioner. Ms. [REDACTED] has also signed the attorney's Form G-28, Notice of Entry of Appearance as Attorney or Representative. As Ms. [REDACTED] is considered the petitioner, the Form I-290B, Notice of Appeal, submitted by counsel will, therefore, be considered properly filed.

On appeal, counsel asserts that the decision did not "meaningfully address the evidence," and asserts that errors of fact and law were made. Counsel's brief, in support of the appeal, states, "The decision was based on incorrect provisions of law and regulations and was therefore improper and erroneous." Counsel discusses that religious workers are distinct from ministers under the regulations, and states that the director relied on erroneous provisions in the regulations in her denial, and was incorrect in concluding that the beneficiary would work in a "religious vocation." Counsel takes issue with the director's statements that the petitioner did not give details regarding her prior work experience and means of support, and asserts that the director's decision "expands the INA and regulations to require that the beneficiary have [sic] worked full-time in her 2 years experience." Counsel further asserts that the director failed to consider evidence regarding the Church's ordination procedures and the petitioner/beneficiary's compliance with them.

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

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).

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.

The petition was filed on July 31, 2000. Therefore, the petitioner must establish that she was engaged continuously as a religious worker from July 31, 1998 until July 31, 2000. The petitioner indicated on the I-360 petition that she last entered the United States on December 30, 1999, as a B-2 visitor. A copy of the passport was submitted. The passport did not, however, include a copy of the Form I-94, Arrival and Departure Record, as the petitioner's nationality is Canadian. The passport indicates a single entry into the United States at San Francisco, California, on November 18, 1999. On Part 4 of the Form I-360, the petitioner indicated she has not worked in the United States without permission. A letter dated November 7, 2000, from the President of the Church of Consciousness indicates that records showing extensions of stay or changes of status are "not applicable," and indicates that the petitioner does not possess Employment Authorization in the United States.

The sole issue raised by the director to be addressed in this proceeding is whether the petitioner established that she is qualified for the position within the religious organization, as a minister of religion. It is noted that the director's decision states both that the petitioner will be working "in a religious vocation," and concludes that the "petitioner has failed to establish that the beneficiary is qualified as a minister of religion." Therefore, the director's statement that, "The job title and duties of the position indicate that the beneficiary will be working in a religious vocation," and reference to the regulations at 8 C.F.R. § 204.5(m)(3)(ii)(D) are withdrawn.

The regulations at 8 C.F.R. § 204.5(m)(2) provide the following definition:

*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)(4) indicates, in pertinent part, that the job offer requires a letter from the authorized official of the religious organization in the United States that "must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration)..."

The record reflects that the petitioner is a native of Canada, was a founding member of the Church of Consciousness in 1995, and was ordained by that church on August 23, 1995. In January 1996, the petitioner moved to England where she "practiced and studied" with [REDACTED]. The record also contains letters from two individuals in England attesting that the petitioner "was actively pursuing her vocation through meditation, Satsung (worship) between the years of 1966 and 1999." The statements indicate that the petitioner and others did "various types of meditation at her home in England on a regular basis."

A letter dated May 31, 2000, on [REDACTED] letterhead, states that:

Patricia Lodge (Pralina) participated under the guidance of Mikaire (Anamo) and began her spiritual study with Mikaire in July 1996 in England. Her work with Mikaire included Meditation and Spiritual teaching. Patricia completed and fulfilled all the requirements of this teaching to the highest degree.

This letter is unaccompanied by transcripts, or other documentation illustrating the course of study pursued, its duration and intensity of time commitment, the qualifications of the trainers, and other details.

The record also reflects that the petitioner submitted a "Certificate of Ordination", dated August 23, 1995, from the Church of Consciousness, signed by the President and Secretary of the church. This certification attests that the petitioner met all the necessary requirements and satisfied the standards of qualification in order to practice as a minister of the Church of Consciousness.

The record does not, however, indicate what course of study or requirements were met by the petitioner in order to obtain the Certificate of Ordination. The record does not document the status of the religious organization in Canada, nor does it clarify by what standards and authority the petitioner was ordained in 1995. In a letter dated June 30, 2000, the President of the Church of Consciousness stated that the Church was "founded in 1995," and was "officially incorporated in California in 1999." A handwritten note on the Articles of Incorporation indicates the church was "forming in August 1995." While the reference to August 1995 may refer to its formation in the United States, nevertheless, it is unclear what form of organization existed and by what authority the petitioner was ordained, presumably in Canada, in August 1995. See *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978) and *Matter of Bisulca*, 10 I.&N. Dec. 712 (R.C. 1963). The petitioner's work with [REDACTED] was performed well after her ordination, and thus would not appear to have been a qualification for receiving the Certificate of Ordination. In addition, the petitioner did not establish that [REDACTED] and the Church of Consciousness are part of the same religious denomination.

A letter from the President of the Church dated June 30, 2000, states the church offers a training program for ministers:

The program consists of three weeks of training which are followed by a year of work as an assistant minister. During that year, the assistant conducts twenty audited sessions with the public. After the year, the assistant is qualified to take a three week minister training, and thereafter, he/she becomes a minister and is allowed to work with the public unsupervised.

The petitioner has not shown how she could have complied with these provisions to obtain ordination, requiring over one year of training and work as an assistant, as the organization was founded on an unspecified date in 1995, and she was ordained in August of the same year. It is noted that the By-Laws of the Church of Consciousness do not discuss how one becomes ordained in this denomination.

Counsel's assertion that the director ignored evidence concerning ordination procedures and the petitioner's compliance with them is not persuasive. Based on the evidence in the record, in view of the earlier discussion, the petitioner has not established that she is qualified as a minister of religion. Therefore, the petition must be denied.

Beyond the decision of the director, the petitioner has not established that she had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition. The requisite two-year period, July 31, 1998 until July 30, 2000, during which the beneficiary must have been continuously engaged in religious work, occurs in part while the petitioner resided in England and in part while she was in California.

Regarding her work in England, the record reflects that the petitioner practiced and studied with a [REDACTED] since 1996, and regularly performed various types of meditation with others at her home. The director requested additional evidence about the work history for the two-year period, including hours spent, duties, evidence of remuneration, and other details, along with a request for evidence on other issues. The letter from the President of the Church of Consciousness stated that information about the religious worker was "not applicable," apparently having interpreted the request as meaning that a minister need not respond to those types of questions. The record, therefore, is not detailed concerning the petitioner's ministry while in England, and there is no evidence of remuneration there.

Regarding her work in the United States, the President of the Church of Consciousness stated that the petitioner visited the San Francisco area "on many occasions" between 1995 and 1999, "played a key role in the founding of the Church of Consciousness," and ministered to the congregation and led workshops without remuneration. It is noted that the passport submitted was issued in London, England in July 1999, and shows only one entry to the United States on November 18, 1999. A copy of the prior passport was not submitted. The president of the church states that the proffered position "entails leading Church services, workshops and events, ordaining new ministers, conducting marriage, baptism and funeral services, and generally sharing the beliefs of the Church of Consciousness." The submitted documentation does not detail the hours devoted to ministerial duties and hours devoted to administrative work and other non-ministerial duties performed in the petitioner's capacity as a director, Treasurer and minister for the religious organization. It is noted that the church's by-laws at Article 3, Section 5, indicate that directors serve without compensation, and Article 4, Section 10, indicate that officers' salaries shall be fixed by resolution of the Board. The record does not include objective documentation to establish that payments of a stipend, and/or payments for her duties as Treasurer, were made to the petitioner.

Counsel asserts that the director's decision "expands the INA and regulations to require that the beneficiary have worked full-time in her 2 years experience." Counsel states that the decision did not cite regulations or cases that interpret the two-year experience provision to require a certain number of hours, or to require information about the means of support. Counsel's assertions are not persuasive.

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 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. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals (BIA) 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 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 hold otherwise would be contrary to the intent of Congress.

In this case, the record reflects that the petitioner has not established that she was continuously engaged in a religious vocation or occupation for the two full years prior to the filing date of the petition.

Another issue not raised by the director that will be discussed in this proceeding is whether the petitioner has established its ability to pay the beneficiary's proffered wage of \$150 per month and room and board.

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.

The record contains Bay View Bank statements for a "Basic Business Checking" account in the name of The Church of Consciousness. The statements submitted cover the period of September 1999 until May 2000, and demonstrate that the account held a balance of \$94, in September 1999, and held a balance of \$37,813.72 in May 2000, with an average of \$29,420.67 over the nine-month period. The president of the church stated in a letter dated June 30, 2000, that the church "receives an income of about \$7,000 per month" and has "assets total[ing] \$46,398.46." The petitioner, however, has not

documented the costs of room and board, and has not submitted annual reports, federal tax returns, or audited financial statements that would illustrate the liabilities of the proposed employer and permit a conclusive determination on the its ability to pay the proffered wage in accordance with 8 C.F.R. § 204.5(g)(2).

Another issue not raised by the director that will be discussed is whether the proposed employer is a bona fide nonprofit religious organization.

8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

- (3) *Initial evidence.* Unless otherwise specified, 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 § 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

As discussed earlier, there is no documentation in the record discussing the status of the religious organization in Canada. In response to the director's request for evidence, the president of the Church of Consciousness stated in a letter dated November 7, 2000, that the Church "existed in England when its founders resided in England. Its name was the same, 'Church of Consciousness,' although it was not formally registered there. The Church of Consciousness no longer exists abroad." The petitioner submitted unsigned Articles of Incorporation of the Church of Consciousness, in the state of California, dated September 7, 1999. A handwritten note on the Articles indicates that the church was incorporated September 14, 1999, but "started to form in August 1995." The "ByLaws of The Church of Consciousness" are dated September 27, 1999, and are unsigned.

The record contains a letter from the State of California Franchise Tax Board dated June 13, 2000, indicating that the Church of Consciousness is exempt from state tax. The record also includes an IRS letter of recognition, dated February 16, 2000, granting tax-exempt status to The Church of Consciousness c/o The Umi Foundation, "under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3)." The letter states the church is "an organization described in sections 509(a)(1) and 170(b)(1)(A)(i)."

The record, in this case, indicates that the proposed employer was not recognized as a bona fide nonprofit organization exempt from federal tax until approximately five months prior to the ending of the requisite two-year period for this petition. Thus, the petitioner has not shown that she has met the requirements under 8 C.F.R. § 204.5(m)(1) which states, in pertinent part, that this 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. [emphasis added]" In addition, as the church did not establish itself until 1999, as indicated by its Articles of Incorporation, the petitioner would be precluded from establishing evidence under 8 C.F.R. § 204.5(m)(3)(i)(B).

On appeal, counsel asserts that the "denial [of this petition] is inconsistent with the decision granting the Church of Consciousness' petition in behalf of Minister Tom Lodge, submitted concurrently with [this petition], and sharing many key facts and documents." Counsel states, "In the interest of consistent application and interpretation of the law, the instant denial should be reversed or

remanded for a decision consistent with that in the case of Mr. [REDACTED] Counsel provided the Form I-797C for Mr. [REDACTED] with file number WAC 00 218 54128.

It is noted that CIS is not required to approve applications or petitions where eligibility has not been demonstrated. *Matter of M-*, 4 I&N Dec. 532 (A.G. 1952; BIA 1952). See also *Pearson v. Williams*, 202 U.S. 281 (1906); *Mannerfrid v. Brownell*, 145 F. Supp. 55 (D.D.C. 1956), affirmed 238 F.2d 32 (D.C. Cir. 1956); *Lazarescu v. United States*, 199 F.2d 898 (4<sup>th</sup> Cir. 1952); and *U.S. ex rel. Vajta v. Watkins*, 179 F.2d 137 (2<sup>nd</sup> Cir. 1950). It is not possible to determine from this record of proceeding whether the case of Mr. Lodge was properly adjudicated, in other words, whether his case was approved in error, or whether the facts and conditions of his case were sufficient to warrant approval. As discussed above, the record does not establish that this petitioner, Ms. Lodge, is eligible for the classification sought.

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.