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

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

File [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 15 2003**

IN RE: Petitioner:
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:

SELF-REPRESENTED

PUBLIC COPY

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

The petitioner is a church, seeking 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 employ him as a minister.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition. The director further found that the petitioner failed to establish that it had the ability to pay the proffered wage.

On appeal, the petitioner submits additional evidence.

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 religious corporation incorporated in 1930. The beneficiary is a 36-year old native and citizen of Argentina who last entered the United States on June 7, 2001 on the visa waiver program.

The first issue to be addressed in this proceeding is whether the petitioner established that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years 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 August 20, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least August 20, 1999.

In a request for additional evidence, the director asked the petitioner to submit evidence of the beneficiary's work history beginning August 30, 1999 and ending August 30, 2001. The petitioner failed to address this issue in the response.

On appeal, the pastor of the petitioner wrote that:

[The beneficiary's] job description is as following [sic]: teach membership, church maintenance and whatever else is requested from him. The church is proud to be able to help and sponsor Brother [beneficiary] and his family with housing and a salary. As the Arizona District Superintendent, I send [the beneficiary] out to preach 2 to 4 times a month and in turn he receives payment.

[The beneficiary] has been an ordained Minister for many years in this organization.

On appeal, the petitioner also submitted a letter indicating that relatives of the petitioner's pastor gave the beneficiary free housing for a period of six to ten months in exchange for his help

around the house and yard.

Finally, the petitioner provided CIS with a document detailing the beneficiary's job history that indicates that the beneficiary was ordained as a minister in March 1997, and that he served an affiliated church in Argentina from 1995 through 2001.

In this case, the petitioner did not provide a detailed description of the beneficiary's job duties in either the United States or in Argentina. The petitioner failed to indicate whether the beneficiary was employed on a full or part time basis or whether he was salaried. Absent a detailed description of the beneficiary's employment history, supported by corroborating evidence such as certified tax documents, the AAO is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

The second issue to be addressed in this proceeding is whether the petitioner demonstrated its ability to pay the proffered wage.

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 failed to submit any evidence of its ability to pay the wage. The petitioner failed to overcome this objection of the director to approving the petition.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary is qualified as an ordained minister pursuant to the regulations. Further, the petitioner failed to demonstrate that a qualifying job offer has been tendered. On appeal, the petitioner submitted a letter written by the owner of a janitorial service indicating that there is a custodian position open for the beneficiary. Since the appeal will be dismissed for the reasons cited above, these issues will not be analyzed further.

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.