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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: [redacted] Office: VERMONT 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)

PUBLIC COPY

ON BEHALF OF PETITIONER:

[redacted]

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, Vermont 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 "worker priest."

The director denied the petition, finding that the evidence was insufficient to satisfy the requirement that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submits a brief and additional documentation.

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 church claiming affiliation with the Evangelical Lutheran Church. The beneficiary is a 51-year old native and citizen of Ghana. The petitioner submitted evidence that it has the appropriate tax exempt recognition. The beneficiary entered the United States as a nonimmigrant visitor for pleasure on June 29, 1991.

At issue in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for 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.

The petition was filed on May 3, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least May 3, 1999.

The petitioner submitted a letter from its senior pastor dated October 9, 2001 stating that:

> [The beneficiary] is on staff at [the petitioning church] as a Worker-Priest ministering principally to West African immigrants in our congregation. As has also been provided before, his duties include worship leading, preaching, teaching and providing pastoral care to our parishioners. His service in ministry here requires that he spend in excess of 35 or 40 hours per week serving our congregation. At present . . . his total compensation package, paid by this congregation, is $23,300 per year. While [the beneficiary] does have another part-time job, his primary employment and means of fiscal support is through his employment here at [the petitioning church.]

Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On appeal, counsel for the petitioner asserts that the beneficiary has been employed as a worker-priest by the petitioning church since 1998. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence on the record indicates that in 1999, the beneficiary earned $8,200 in wages from the petitioning church and $21,919.65

in wages as a nursing assistant from Inova Health System. In 2000, the beneficiary earned $11,633 in wages from the petitioning church and $35,620 in wages at Inova Health System. In 2001, the beneficiary earned $15,000 in wages from the petitioning church, $1,850 in wages from the DRS-PAS Program, and $38,477.09 in wages from Inova Health System.

As previously noted, the statute and regulations require the beneficiary to have been continuously engaged in the religious occupation for the qualifying two-year period. The term "continuously" is not new to the context of religious workers. In 1980 the Board of Immigration Appeals determined that a minister of religious was not "continuously' carrying on the vocation of minister when he was a fulltime student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980) Here, the petitioner failed to establish that the beneficiary had been continuously engaged in a religious occupation for the two-year period immediately preceding the filing of the petition.

In review, the petitioner has failed to establish that the beneficiary has been employed in a full-time religious occupation continuously for the two-year period immediately preceding the filing 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. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.