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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

identifying data deleted to
prevent disclosure of unwarranted
information to the general public



File: [Redacted]

Office: Vermont Service Center

Date:

SEP 30 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:

SELF-REPRESENTED

PUBLIC COPY

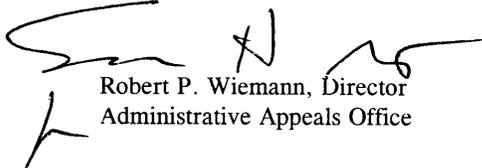
INSTRUCTIONS:

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, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is 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/co-pastor at a salary of \$300.00 monthly. The petitioner states that the beneficiary will also be provided with room and board, valued at \$600.00 monthly.

On March 5, 2001, the director denied the petition, finding that the petitioner had failed to establish the ability to pay the beneficiary the offered wages at the time of filing the petition. On April 9, 2001, the petitioner filed an appeal of the director's decision. On August 14, 2001, the director rejected the appeal as untimely filed, accepted it as a motion to reopen, and affirmed his decision to deny the petition. The petitioner filed the instant appeal of that decision on September 7, 2001.

On appeal, the petitioner asserts that it has an account sufficient to pay the beneficiary the offered wage.

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 is described as a Pentecostal church affiliated with the Church of God in Christ, Inc., headquartered in Memphis, Tennessee. The beneficiary is a native and citizen of the Dominican Republic. The Form I-360 petition reflects that the beneficiary is married and has four children. The petition also indicates that the beneficiary is not currently employed in the United States and has never worked in the United States without permission.

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

At issue in this proceeding is whether the petitioner has the 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.

The priority date of the instant petition is May 5, 2000, the date it was filed.

Upon the initial submission of the petition, the petitioner submitted documentation to establish that the [REDACTED] and its subordinates had been recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. The petitioner also submitted evidence that an entity entitled [REDACTED] was included as tax exempt under the group tax exemption issued to [REDACTED]

After filing the petition, in response to the director's request for additional information, the petitioner provided documentation relating to the personal financial accounts of the petitioning church's pastor, [REDACTED], and his spouse, [REDACTED]. Later, the petitioner also submitted a brief statement from the Navy Federal Credit Union indicating that a public account in the name of Macadonia COGIC held a combined savings and checking account balance of \$7,330.83.

On appeal, [REDACTED] explains that [REDACTED] is a church and that the [REDACTED] account is a church account, separate from his personal account. In support of the appeal, [REDACTED] submits an additional statement from the Navy Federal Credit Union indicating that [REDACTED] and the petitioner share the same tax identification number. [REDACTED] also submits a letter from the [REDACTED] headquarters in Memphis stating that [REDACTED] and [REDACTED] are members of the [REDACTED].

It is concluded that the petitioner has failed to adequately establish the ability to pay the beneficiary the proffered wage since the filing date of the petition on May 5, 2000. The petitioner has failed to provide documentation in the form of federal tax returns or audited financial statements in the petitioner's name or further evidence to establish the relationship of [REDACTED] and the petitioner, [REDACTED]. Therefore, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to adequately establish that: (1) it is a qualified religious organization; (2) it is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code; (3) the beneficiary is a qualified, ordained minister; and (4) the beneficiary has been continuously and solely carrying on the vocation of a minister for the two-year period immediately preceding the filing of the petition. Since the appeal will be dismissed for the reason stated above, these issues need not be examined further at this time.

In reviewing an immigrant visa petition, CIS 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).

Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.