

C1

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 Eye Street N.W.
Washington, D.C. 20536

File: EAC-01-143-52561 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:

PUBLIC COPY

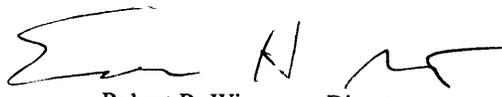
INSTRUCTIONS:

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 the 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 described as a church. It seeks classification of the beneficiary as a special immigrant minister 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 one of its pastors.

The director denied the petition finding that the petitioner failed to establish that the beneficiary will be continuously carrying on a qualifying religious occupation or that the beneficiary has been employed in a full-time religious occupation for at least two years preceding the filing of the petition pursuant to 8 C.F.R. § 204.5(m)(1).

On appeal, the petitioner's counsel stated that the beneficiary began work for the petitioner in December 1998 and that the beneficiary meets the religious qualifications for a pastor.

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 states that it has a congregation of approximately 300 and that it has four pastors. The beneficiary is a native and citizen of Nigeria who was last admitted to the United States on June 10, 1998, as a B-2 visitor. The record reflects that he has remained beyond his authorized stay and has resided in the United States since such time in an unlawful status. The petitioner indicated on the petition that the beneficiary has been employed in the United States without authorization.

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

The first issue to be addressed in this proceeding is whether the beneficiary will be engaged continuously in a qualifying religious vocation or occupation.

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

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

Regulations at 8 C.F.R. § 204.5(m)(2) state, in pertinent part, that:

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.

In support of the beneficiary's qualifications for his position as pastor of the petitioner's "outreach" ministry, the petitioner has submitted four separate certificates of satisfactory completion of training courses.

On appeal, the petitioner's counsel states that the beneficiary "has received the same focused and intensive religious training as the recognized traditional religious occupation. He has submitted the certificates indicating the completion of all religious courses."

The evidence of record is insufficient to establish that the beneficiary will be functioning in a qualifying religious occupation. First, the petitioner has not fully explained any standards required to be recognized as a pastor in the denomination or shown that the beneficiary has satisfied any standards other than having taken "in-house" training courses. The record contains insufficient evidence of the length of the study courses or evidence of their comprehensiveness.

Second, simply producing documents purported to be certificates of completion is not proof that an alien is entitled to perform the duties of a qualifying religious occupation. The record contains no evidence that the beneficiary has any formal theological training. Simply producing documents purported to be certificates of completion is not proof that an alien is entitled to perform the duties of a minister. Without any formal theological training the beneficiary would be considered a "lay preacher" and ineligible for consideration as a minister pursuant to 8 C.F.R. 204.5(m)(2).

Finally, to establish that an alien is qualified in a religious position and has been carrying on such a position, acceptable evidence includes a letter from a Superior or Principal of the denomination in the United States. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). The petitioner has not identified the organizational structure of its denomination and an official of that denomination has not verified the beneficiary's credentials as a recognized member of the clergy.

Absent a credible and consistent explanation of the beneficiary's qualifications and recognition as a pastor, it must be concluded that the petitioner has failed to satisfy this requirement. For this reason, the petition may not be approved.

The second issue to be addressed is whether the beneficiary was continuously carrying on a religious vocation for at least the two years preceding the filing of the petition.

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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 March 29, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a pastor since at least March 29, 1999.

In this case, the petitioner asserts that the beneficiary has been a full-time paid employee since December 1998. The petitioner submitted a Form 1099-MISC Miscellaneous Income for the year 2000 indicating that the beneficiary earned \$19,200 during the year 2000 as an employee of the petitioner. The petitioner also submitted a Form 990 Return of Organization Exempt from Income Tax for the year 2000. No evidence of the beneficiary's purported earnings or employment for the years 1998, 1999 and 2001 is contained in the record. Simply going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. See, *Matter of Treasure Craft of California* 14 I&N Dec. 190 (Reg. Comm. 1972). The record does not establish that the beneficiary has continuously carried on a full-time religious occupation for at least two years preceding the filing of the petition. For this additional reason, the petition may not be approved.

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.