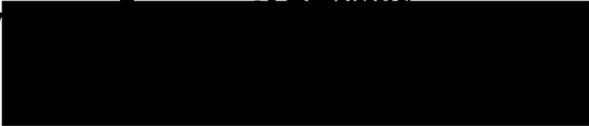


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U.S. Department of Homeland Security

Citizenship and Immigration Services

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invasion of privacy



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

File: WAC-01-217-53635 Office: California Service Center

Date: SEP 30 2003

IN RE: Petitioner: [Redacted]
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: [Redacted]

PUBLIC COPY

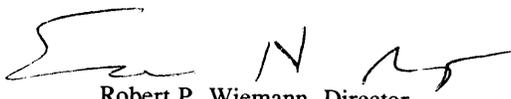
INSTRUCTIONS:

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 Acting Director, California 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 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 "missionary" at a salary of \$1,100 per month.

The acting director denied the petition on the grounds that the petitioner failed to establish that it was a qualifying tax exempt religious organization, and that the beneficiary had been employed in the religious occupation for at least the two years preceding the filing of the petition.

On appeal, the petitioner's counsel disputes the findings of the acting director and submits a brief.

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 beneficiary is a native and citizen of Guatemala who last entered the United States in 1989 in an undisclosed manner. The petitioner indicated that the beneficiary has had unauthorized employment in the United States.

The first issue to be addressed in this proceeding is whether the petitioner is a qualifying religious organization.

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:

(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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

On appeal, counsel states that the petitioner has already submitted sufficient documentary evidence establishing its exempt tax status.

On review, the record does not show that the petitioner has been granted tax-exempt status by the IRS or does it contain documentation required by IRS to establish such status.

The next issue to be addressed in this proceeding is whether the beneficiary had had the requisite two years of continuous experience in a religious occupation.

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.

On appeal, counsel for the petitioner states that the beneficiary has been a full-time worker since May 1999 who was compensated with "room and board." The petitioner indicates that it will pay the beneficiary a modest monetary salary when the petition is approved.

On review, it must be concluded that voluntary or informal employment with compensation in the form of room and board is insufficient to satisfy the requirement of continuously carrying on a religious occupation. The plain meaning of the term "occupation" is an individual's primary endeavor and means of financial support.

Clearly, the beneficiary's voluntary service as a missionary does not constitute engaging in a religious occupation as contemplated by the statute. Moreover, there is no evidence to support such a claim, other than the petitioner's own testimony.

The petitioner has given no indication as to how the beneficiary supports himself financially in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as tax documents, the CIS is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

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.