



U.S. Citizenship  
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 19 2004

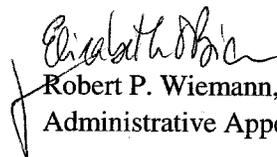
IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based 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 Christian Science health care facility. It seeks to classify 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), to perform services as a Christian Science nurse. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The petitioner's motion to reopen and reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

On appeal, counsel 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, 2008, 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, 2008, 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 regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a copy of an April 21, 1975 letter to the Arden Wood Benevolent Association, in which the IRS granted tax-exempt status to that organization as a foundation and publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code (IRC). The director determined that these provisions do not apply to religious organizations.

On appeal, counsel argues that the director misread the statute and that section 170(b)(1)(A)(vi) of the IRC includes organizations of a religious nature. Counsel asserts that the petitioner is affiliated with the Christian Science denomination and that practitioners and nurses of the Christian Science Church are considered "ministers of religion" under the Foreign Affairs Manual (FAM).

The FAM has no bearing on the tax exemption status of the [REDACTED]

Section 170(b)(1)(A)(vi) of the IRC applies to organizations of a religious, charitable, scientific, literary, or educational purpose. Absent a letter from the IRS granting tax-exempt status as a *religious* organization, the regulation requires the petitioner to submit "such documentation" as is required by the IRS to establish eligibility for tax exemption as it relates to religious organizations. The petitioner submitted none of the documentation required by the regulation. As the submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B), they fail to substantiate the petitioner's claim as a bona fide religious organization.

Beyond the decision of the director, the petitioner has not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. This deficiency constitutes another basis for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "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 regulation at 8 C.F.R. § 204.5(m)(3) states, 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.

The petition was filed on July 19, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a Christian Science nurse throughout the two-year period immediately preceding that date.

The petitioner states that the beneficiary worked as a student Christian Science nurse with the organization from March 2000 to June 1, 2002. The petitioner also states that the beneficiary was in training to "prepare[] her in the religious vocation and occupation of Christian Science nursing." According to the petitioner:

[This two-year work/study program is designed to] lead to eventual status as a Journal-listed nurse for those who, after an extensive period of concentrated study and preparation, have become qualified to apply for listing in the Christian Science Journal. Journal-listed Christian Science nurses are recognized by both the State Department and the INS as ministers of religion (Foreign Affairs Manual Part III, S 42.24, N.2.3. 1989.)

Citing the FAM, counsel also asserts that the two-year experience requirement can be met by seminary study. The FAM, which the United States Department of State uses to administer consular visa processing, is not binding on CIS in the administration of the Act. First, the petitioner has not established that the beneficiary was engaged in seminary study. Secondly, counsel cites no precedence that permits study as a substitute for the work experience required by the statute and regulation. The statute and regulation clearly require two years experience in the religious occupation for the two years immediately preceding the filing of the petition. Section 203(b)(4)(iii) of the Act, 8 U.S.C. § 1153(b)(4)(iii); 8 C.F.R. § 204.5(m)(3)(ii)(A). Study for work in an eventual occupation is not experience in the occupation as required.

Beyond the decision of the director, and notwithstanding the citation to the FAM, the regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n 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.

The evidence does not establish that the beneficiary is a minister within the meaning of the regulation. The position may qualify as that of a religious occupation; however, as the petitioner has not established that the beneficiary possesses the qualifying two-year work experience, we will not further address this issue.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.



**ORDER:** The appeal is dismissed.