



U.S. Citizenship
and Immigration
Services

Decision of the Administrative Appeals Office
[Handwritten mark]

[Redacted]

FILE: EAC 02 103 53526 Office: VERMONT SERVICE CENTER

Date: JUN 15 2004

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)

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the Vermont Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration and action.

The petitioner is a local conference of the Seventh Day Adventist 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 an Associate Pastor for Family Life and Children's Ministries. The director determined that the petitioner had not established that the beneficiary was qualified as a religious worker within the religious organization.

On appeal, counsel states that the beneficiary is qualified for the position of pastor of children's ministry within the denomination and the petitioning church. Counsel indicated that a brief and/or additional evidence would be submitted within 30 days of the filing date of the petition. To date, no additional evidence has been received; therefore, the record shall be considered complete.

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 Revenue 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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue Code of 1986 at the request of the organization. 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 issue raised by the director is whether the petitioner has established that the beneficiary is qualified for a religious worker position within the religious organization.

Pursuant to 8 C.F.R. § 204.5(m)(3)(ii)(B), a petition to classify an alien as a minister must be accompanied by a letter from an official of the religious organization in the United States stating that the alien 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.

In this case, the petitioner is the [REDACTED] a duly recognized subsidiary of the [REDACTED] The Potomac Conference has jurisdiction over the Commonwealth of Virginia, the District of Columbia, and portions of Maryland. The petitioner seeks to employ the beneficiary as a Pastor for its Children's [REDACTED]

[REDACTED] The petitioner has provided a letter from [REDACTED] the Director of Human Resources of the Potomac Conference, stating that the position is a traditional religious function within the religious organization and that the beneficiary is qualified for the position within the religious organization.

The record shows that the beneficiary was awarded a Bachelor of Theology degree by [REDACTED] in Takoma Park, Maryland, on April 20, 1996. The record contains the beneficiary's transcript from that institution showing that the beneficiary completed 124 credit hours and was awarded a Bachelor's degree in [REDACTED] with a minor in Psychology. The beneficiary subsequently completed 46 credits toward a master's degree in theology at [REDACTED] university in Berrien Springs, Michigan, in the Fall quarter of 1996 and the Spring and Summer quarters of 1997.

The beneficiary completed four units in Clinical Pastoral Education during the period from July 24, 1998 to May 17, 1999, and was awarded certification in the field in 1999. He was subsequently licensed as a Seventh-Day Adventist Minister on July 1, 2001.

In a letter dated January 22, 2002, Ms. Vinglas stated that the position requires an individual with a bachelor's degree in theology and membership in good standing in the Seventh-day Adventist Church. She further stated

that the person filling the position must have an established sense of spiritual calling to the ministry. Finally, she stated that the beneficiary is well qualified to fill the position. In view of the foregoing, it is concluded that the petitioner has provided sufficient evidence to establish that the beneficiary is qualified for the position within the religious organization, and that the basis for the denial of the petition has been overcome.

However, after review of the petition, it is noted that the record does not contain sufficient evidence to establish that the beneficiary had been engaged continuously in the same religious occupation throughout the two-year period immediately preceding the filing date of the petition as required at 8 C.F.R. § 204.5(m)(1). The record indicates that the beneficiary served as a pastor of special ministries, a chaplain, and an associate pastor of family and children's ministries during the two-year qualifying period. As these occupations differ, the beneficiary cannot be considered to have been continuously engaged in the same religious vocation or occupation throughout the requisite period.

The record also does not contain sufficient evidence to establish that the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition. The petitioner has not provided copies of its annual report, federal income tax returns, or audited financial statements as required at 8 C.F.R. § 204.5(g)(2). Therefore, the decision of the director is withdrawn and the matter is remanded for further consideration and action.

The director shall review all relevant issues and make a determination. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further consideration and action consistent with the above discussion, and entry of a new decision.