

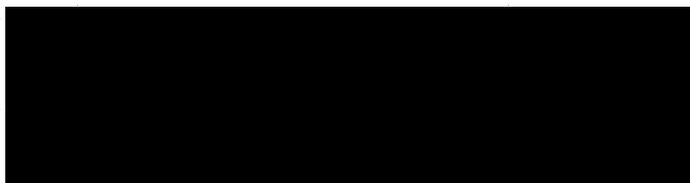
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **APR 05 2005**
EAC 03 013 51361

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

PETITION: Immigrant 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:



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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a church. 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 an assistant pastor. The director determined that the beneficiary's "past and proposed duties do not require specific religious training and, therefore, [the beneficiary's position] does not qualify as a religious occupation."

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).

As part of the basis for his denial, the director noted that the beneficiary's position does not require advanced religious training in order to perform the beneficiary's duties. We find the director's requirement of advanced religious training to be in error, as the regulation requires no specific religious training or theological education.

Beyond this error, we find the director's decision contains a more fundamental flaw. The regulation makes clear that there are three distinct types of religious workers. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the beneficiary must be coming to the United States "solely for the purpose of carrying on the vocation of a minister . . . [or] working . . . in a professional capacity in a religious vocation or occupation. The petitioner has submitted copies of the beneficiary's ordination certificate, bachelor's degree, and masters degree. Such evidence satisfies the regulatory requirement at 8 C.F.R. § 204.5(m)(3) which states that:

[I]f 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.

The record indicates that the beneficiary is an ordained minister and that the petitioner seeks to employ the beneficiary as an assistant pastor. Based upon this information and the fact that the regulations clearly distinguish between aliens pursuing the vocation of a minister and aliens engaged in religious occupations, the director's analysis of the beneficiary's proposed employment as an occupation, rather than finding such evidence satisfactorily establishes the beneficiary is pursuing a vocation as a minister, was in error.

Although we withdraw the director's only stated ground for denial, we find there is an additional issue that needs to be addressed regarding the beneficiary's eligibility. The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate 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 November 4, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing essentially the same duties as the duties of the proffered position, throughout the two years immediately prior to that date, from November 4, 2000 through November 4, 2002.

In a letter submitted by Jong Kil Kim, senior pastor of the Korean Union Church of Chile, Pastor Kim states that the beneficiary "has served as associate pastor at the Korean Union Church of Chile in year of 1997." Ho Cheol Ra, senior pastor of the Iglesia Presbiteriana Chung-Ang in Argentina, states that the beneficiary served "as the part-time youth pastor of the elementary group . . . during years 1995 and 1996." A third letter, written by pastor Sung Woo Lee of Iglesia Evangelica Presbiteriana Coreana (Hanin) in Argentina, states that the beneficiary served as a minister from November 1997 until October 15, 2000.

The record reflects that the beneficiary first entered the United States on October 18, 2000 as an F-1 nonimmigrant student to attend Lado International College to pursue English language studies. The beneficiary transferred to Liberty Baptist Theological Seminary in Lynchburg, Virginia on January 15, 2001, and reentered the United States as an F-1 nonimmigrant on August 6, 2001. On May 22, 2002, the beneficiary was authorized employment for optional practical training related to his study at the seminary. The seminary awarded the beneficiary a "Master of Arts in Religion" on May 11, 2002. The petitioner's payroll records reflect the beneficiary first received remuneration beginning in August 2002. The record further reflects that the beneficiary was granted a change of classification on May 15, 2003 to work for the petitioner as an R-1 nonimmigrant. Finally, the record reflects that the beneficiary became an ordained minister on July 7, 2002, a mere five months prior to the filing of the petition.

Given the information described above, for the majority of the two-year qualifying period, the beneficiary was a full-time student. From the time he left Argentina in October 2000, until the time he was authorized employment in May 2002, the beneficiary was engaged in studies, not pastoral work.

We do not dispute the fact that the beneficiary seeks to enter the United States in order to carry on the vocation of an assistant pastor in the petitioner's church; however, section 101(a)(27)(C)(iii) of the Act

requires that the beneficiary "has been carrying on such vocation" throughout the two-year qualifying period. Here, the beneficiary has not been carrying on "such vocation." Rather, he has been undergoing training and continuing his studies. Part-time ministerial work by a student is not continuous experience as a minister. See *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The record contains no evidence that the beneficiary was actually performing the duties of a pastor during the time he was attending school. The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work as an assistant pastor has not been carrying on "such work" if the alien has been a student and not carrying on the duties of an assistant pastor for much of the preceding two years.

Further, the fact that the petitioner indicates the beneficiary's position "has special qualifications that are required to do the proposed job," including being an ordained Southern Baptist Minister, appears to further disqualify the beneficiary as he was not ordained until five months prior to the filing of the petition. This fact undermines the claim that the beneficiary, throughout the two-year qualifying period, has been performing essentially the same duties that the petitioner intends for the beneficiary to perform in the United States.

As detailed above, the director's grounds for denial are either irrelevant or erroneous. While the record, at this point, does not fully support a finding of eligibility, the director's decision did not adequately provide the petitioner with an opportunity to remedy the deficiencies in the record. Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.