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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



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MAY 03 2005

FILE: WAC 00 145 52376 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. Subsequently, the AAO reopened the proceeding on the petitioner's motion and remanded the matter to the director. The director subsequently denied the petition a second time, and certified the decision to the AAO for review. The director's decision will be affirmed.

We note that the record reflects no action by the present attorney of record as regards the denial now at issue. A succession of attorneys have represented the petitioner throughout this proceeding.

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 a pastor. The director determined that the petitioner had not established that the beneficiary was a member of the petitioner's religious denomination throughout the two years immediately preceding the filing date of the petition.

The record contains no response to the director's certified decision.

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).

Following the statute, the regulation at 8 C.F.R. § 204.5(m)(1) limits eligibility to aliens who, for at least the two years immediately preceding the filing of the petition, have belonged to a religious denomination which has a bona fide nonprofit religious organization in the United States. 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. The petition was filed on April 19, 2000. Therefore, the petitioner must establish that the beneficiary was a member of the petitioner's denomination throughout the two years immediately prior to that date. Because the beneficiary was outside the United States for the first eight months of the qualifying period, the beneficiary's membership in the petitioning church itself cannot suffice to establish eligibility.

In the initial submission, [REDACTED] pastor of the petitioning church, states that the beneficiary "has been a member of [the petitioning church] since January, 1999 to the present, which is affiliated with the Presbyterian denomination."

On August 16, 2000, the director instructed the petitioner to submit evidence showing a common religious affiliation between the petitioning church and the church to which the beneficiary had belonged during 1998. In response, [REDACTED] states "I was ordained minister from [sic] the Bible Presbyterian Church in Southwest Presbytery. I had studied the philosophy, norms, and doctrines and embraced the faith of the Presbyterian Church." [REDACTED] acknowledges that the petitioning church "is an independent church" that "is not affiliated or part of the assembly of the Presbyterian Church," but he maintains "I am preaching in accordance and consistent with the Presbyterian Church philosophy." The beneficiary, in a separate statement, asserts [REDACTED] "services, preaching and religion practices are similar to The General Assembly of Presbyterian Church in Korea."

Rev. [REDACTED] dean and president of the General Assembly of Presbyterian Church in Korea, states: "The Korean Presbyterian churches started with a single denomination. Therefore, they are similar to each other." [REDACTED] asserts that the beneficiary's appointment to serve the petitioning church "does not constitute any conflict with the church constitution."

[REDACTED] who was the petitioner's attorney of record in late 2000, states: "This information proves that Seoul Paul Presbyterian Church run by The General Assembly of Presbyterian Church in Korea and [the petitioning church] are of the same denomination." [REDACTED] however, does not indicate that any formal affiliation exists between the petitioning church and any Presbyterian denomination in the United States, nor is it clear that, as a Korean official, he would have standing to speak on behalf of any United States denomination.

We noted that [REDACTED] acknowledges the existence of multiple Presbyterian denominations which branched off after having "started with a single denomination." There are several Presbyterian denominations in the United States, such as the Presbyterian Church (U.S.A.) and the Reformed Presbyterian Church of North America. Furthermore, significant doctrinal differences divide these denominations, on such basic questions as the extent to which the entire Bible is to be interpreted literally. Because the term "Presbyterian" refers to a family of denominations, rather than to a single, united denomination, the assertion that the petitioning church adheres to Presbyterian doctrine is only partly intelligible.

It remains that the several Presbyterian denominations have central, national offices through which individual parishes can be recognized, and the petitioner admittedly lacks this affiliation. Whether or not the petitioning church considers itself to be Presbyterian, no denominational authority in the United States has voiced a similar opinion about the petitioning church. Because the statutory and regulatory standards pertain to the United States, a letter from a denominational official in Korea cannot satisfactorily establish the required denominational membership.

In a remand notice issued July 10, 2003, and sent to the petitioner's address, the AAO informed the director that the record did not contain sufficient evidence to demonstrate that the beneficiary has met the denominational membership requirement. This remand order put the petitioner on notice as to this deficiency.

On April 8, 2004, the director issued a notice of intent to deny, stating that the similarities claimed by the petitioner are not sufficient to establish the beneficiary's continuous membership in the same denomination.

The director allowed the beneficiary 30 days to respond to the notice. The record contains no response to this notice.

On September 14, 2004, the director denied the petition based on the above grounds. The director certified the decision to the AAO, and allowed the petitioner 30 days to submit "a brief or written statement" to the AAO. To date, over seven months later, the record contains no further submission from the petitioner and we therefore consider the record of proceeding to be complete as it now stands.

We recall, here, that [REDACTED] initially stated that the petitioning church "is affiliated with the Presbyterian denomination," but he later asserted that the church "is not affiliated or part of the assembly of the Presbyterian church." These statements contradict one another and therefore cannot both be true. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). The credibility issues raised by [REDACTED] contradictory claims, in conjunction with the petitioner's evident failure to offer any rebuttal to the denial, lead us to conclude that the director acted properly in denying the petition. We therefore affirm the director's decision.

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 petition cannot be approved.

ORDER: The director's decision of September 14, 2004 is affirmed.