



U.S. Citizenship  
and Immigration  
Services

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01

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUN 29 2006

EAC 04 065 52124

IN RE:

Petitioner:

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:

[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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a ministry, based in Brazil, that operates several churches internationally. 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's position qualifies as a religious occupation.

On appeal, the petitioner submits witness letters, a brief from counsel, and other materials.

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).

The sole issue raised by the director is the question of whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

*Minister* means an 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.

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Bishop ██████████, secretary of the petitioning ministry, states that the beneficiary “was duly ordained Evangelical Pastor and Minister of the Gospel Ministerial Council of the Churches of Christ on September 20, 1993 in Brazil. Since his ordination, he has continuously served as a Minister of Religion in the Christian faith to the present time.” Regarding the beneficiary’s duties, Bishop ██████████ states:

[The beneficiary] leads a very important role in the Church, including, but not limited to, leading worship services, preparing and delivering sermons; providing religious instruction to the congregations; performing marriages; conducting baptisms, and funerals, as well as supervising church activities, such as adult and children’s Sunday schools, bible studies and prayer meetings offered by the Church in Hyannis, Massachusetts. Additionally, he counsels congregation members (pre-marital, bereavement, and youth counseling).

The petitioner submits a translated copy of a “Certificate of Ministerial Ordination” issued by the petitioner’s headquarters in Brazil on September 20, 1993. The translation reads, in part: “This institution confers on him the right and competence to preach the gospel of our Lord Jesus Christ and fulfill all ordinations, sacraments and ministerial service. . . . We . . . recognize his gift for serving in the ministry. This being as it is, we establish him as an Evangelical Pastor according to our statutes.”

The director issued a request for evidence on March 15, 2005. The director requested several types of evidence in this notice, but nothing specific to ministers. Several of the director’s requests related to religious occupations. In response, the petitioner has resubmitted materials relating to the beneficiary’s ordination, and ██████████ has repeated the assertion that the beneficiary is a pastor with ministerial duties. The petitioner also submits a transcript from the theological seminary that the beneficiary attended in 1997 (several years after his 1993 ordination).

The director denied the petition on August 5, 2005, stating: “The record does not establish that the beneficiary has been and will be employed in a religious occupation.” In context, it is clear that the director was not contesting that the beneficiary worked for the petitioner; rather, the director found that the work performed does not qualify under the classification sought. The director also stated that the petitioner “did not explain the standards for ordination in this denomination nor established [*sic*] that the beneficiary met such standards. . . . It has not been established that the beneficiary’s theological education qualify [*sic*] her for ordination, and did not document the authority of the church to ordain one of its own members.”

On appeal, Bishop ██████████ sets forth the petitioner’s requirements for ordination and asserts that the beneficiary has met those requirements. Other witnesses attest that the beneficiary has been carrying out

ministerial duties since his ordination. Counsel finds it “incredible” that the director appears to dispute that the beneficiary is actually a minister.

The director erred by repeatedly holding the beneficiary’s position to the standards of a religious occupation. A religious occupation is, by statute and regulation, distinct from the vocation of a minister; each has its own separate requirements. Also, several of the director’s requirements go beyond the regulations. What is relevant, for our purposes, is whether the beneficiary is in fact authorized to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of the petitioner’s religion. If the petitioner’s denomination is not competent to decide who qualifies as a minister within that denomination, then it is not clear who is competent to make such a decision. Different denominations have different standards regarding who has the authority to ordain ministers. In this instance, the record contains an ordination certificate issued not by the church in Hyannis where the beneficiary seeks to work, nor by the church in Somerville, but by the ministry’s headquarters in Brazil. The certificate includes the signatures of ranking officials.

We find that the petitioner has submitted thorough and credible evidence to show that the beneficiary has been, and is, a properly ordained minister within the petitioner’s denomination. The director cited no other grounds for denial, and review of the record reveals no obvious impediment to approval of the petition. Therefore, we hereby withdraw the director’s denial of the petition.

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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.