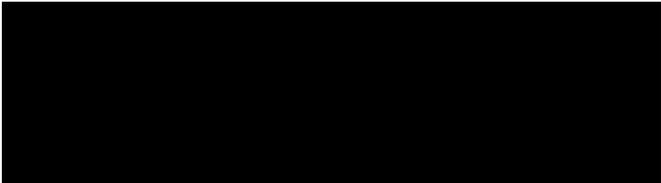


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FILE:

EAC 04 265 52441

Office: VERMONT SERVICE CENTER

Date: **JUL 20 2007**

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.

Maura Deadrick

for 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 dismissed.

The petitioner is a Christian church of the Assemblies of God denomination. 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 minister of multimedia. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister of multimedia immediately preceding the filing date of the petition.

On appeal, the petitioner submits various exhibits and a brief from counsel discussing their significance.

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 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on September 24, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister of multimedia throughout the two years immediately prior to that date.

In a letter accompanying the initial submission, [REDACTED] Executive Pastor of the petitioning church, repeatedly described the beneficiary's duties and compensation in the future tense, stating what they "will" entail. [REDACTED] did not indicate that the beneficiary had actually worked for the petitioner in the past. [REDACTED] praised the beneficiary's "background [and] experience," but provided no specifics about the beneficiary's experience except to state that the beneficiary used to serve "on the editorial staff" of the newsletter of Lenox Road Baptist Church. [REDACTED] also stated: "The next step will allow her to apply to the Assembly of God Credential committee to be a licensed Minister."

A May 22, 2004 certificate states that the beneficiary "successfully completed the Master's Commission One Year Discipleship Program" at the petitioning church. The record documents the beneficiary's active study in ministerial training programs during 2003 and 2004, consistent with Pastor [REDACTED] assertion that the beneficiary seeks "to apply . . . to be a licensed Minister," a credential that the beneficiary evidently did not yet possess at the time the petition was filed.

[REDACTED], Senior Pastor at Lenox Road Baptist Church, that church, stated: "For over five years [the beneficiary] has been attending the Lenox Road Baptist Church where I serve as senior pastor. She became a member in April 2001 and has actively served in various ministries from that time until her departure to the Masters Commission." The letter contained no further details about the beneficiary's "various ministries."

An article from the *Citizens' Voice*, a local newspaper, previews "Caribbean Night" at The Hub, a youth club sponsored by the petitioning church. The article identifies the beneficiary as the "coordinator of Caribbean Night." The article is undated, but it stated that the event was scheduled for "Friday, March 5." March 5 last fell on a Friday in 2004.

On March 25, 2005, the director instructed the petitioner to "[s]ubmit evidence that establishes that the beneficiary has the [required] continuous two years full-time experience in the . . . religious work for the period immediately prior to September 24, 2004." The director requested details such as dates of employment and the time spent on various duties, in the form of "a statement . . . dated and signed by an official of the religious organization" that employed the beneficiary.

In response to the notice, [REDACTED], Senior Pastor of the petitioning church, stated that the petitioning church "will employ [the beneficiary] in the full time position of Minister of Multimedia," and that her "duties will include" several listed functions. As with Pastor [REDACTED] previous letter, [REDACTED] letter never indicates that the beneficiary actually performed any of those functions during the 2002-2004 qualifying period. The position is consistently and exclusively described as a future endeavor.

Witnesses, including the beneficiary's father, state that they provided money or other material support to the beneficiary during 2002-2004. The only exhibit to mention the beneficiary's activities during that period is a letter from the beneficiary herself, who stated "I am now Minister of Multi-media at" the petitioning church, an assertion not corroborated by any church official. The beneficiary also discussed her "prior volunteer duties for over two years at the Lenox Road Baptist Church," in which she claimed often to have "spent up to 40 hours or more [per week] producing projects and training others for the Communications Department of

the church.” The petitioner did not submit any documentation from any current or former employer to confirm and clarify the beneficiary’s past experience. She also did not indicate that she had ever been a paid employee (as opposed to a volunteer) for any religious organization at any time.

The director denied the petition on December 8, 2005, stating that the petitioner had “not submitted evidence to establish what the beneficiary’s prior duties and employment entailed, the commencement and termination dates of employment, the hours spent per week performing those duties, or if the position was a full-time position.” Therefore, the director concluded: “The record does not establish that the beneficiary has the required two years of experience in the religious occupation.”

On appeal, the petitioner resubmits copies of training and educational certificates and a new letter from [REDACTED]. [REDACTED] repeats the assertion that the beneficiary has completed “the first step in the Ordination process of the Assembly of God. Her successful completion of this course work has enabled her to be able to petition The Assembly of God to be recognized as a Certified minister. Her progression would then be to Licensed and finally onto being an Ordained minister.” These comments indicate that the beneficiary seeks, ultimately, to work as a minister. Nevertheless, [REDACTED] also makes it clear that the beneficiary still does not possess the necessary credentials of a minister, and therefore obviously did not hold those credentials during the two-year qualifying period. The beneficiary cannot qualify for special immigrant status in the vocation of a minister if she has never been qualified to work in the vocation of a minister. In this respect, the petition is, at best, premature.

[REDACTED] also asserts that the beneficiary worked at least 40 hours per week for the petitioning church, first as a mentor from August 2003 to May 2004, and thenceforth in the “Multi Media Ministry.” We note that neither of the petitioner’s two prior submissions contained any mention of her work as a mentor, and discussed her multimedia work exclusively in the future tense as work that she “will” perform. The petitioner also places itself in the uncomfortable position of asserting that the beneficiary’s work cannot be delegated to a volunteer from the congregation, while asserting that the beneficiary was precisely that while performing those functions.

The beneficiary, in a new statement, asserts that she worked “more than 35 hours on average per week” directing “the Video Ministry at the Lenox Road Baptist Church” between April 2001 and August 2003. The petitioner submits no corroborating evidence materials from Lenox Road Baptist Church. The petitioner submits a copy of the previously submitted letter from [REDACTED], who offered only a vague assertion about the beneficiary’s participation “in various ministries.” That letter mentioned that the beneficiary sometimes worked with “the Communication department’s video team,” but did not indicate or imply that she worked 35 hours a week with “the Video Ministry.”

The available evidence is not sufficient to show that the beneficiary worked full-time as a religious worker during the 2002-2004 qualifying period. Only on appeal does any church official state that the beneficiary performed work for the petitioning church during that period; previous submissions indicated only that the beneficiary studied for the ministry during that time. Also, by all accounts, whatever work the beneficiary did perform was done as an uncompensated volunteer, which is problematic for a finding of continuous experience under *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

We affirm the director's finding that the vague and changing descriptions of the beneficiary's unpaid church activities are insufficient to meet the two-year experience requirement.

We also find a second issue, beyond but related to the director's decision. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A), the same regulations that require two years of continuous experience in the vocation or occupation immediately prior to the filing date, also require the beneficiary to have been a member of the prospective United States employer's religious denomination during that same two-year period. 8 C.F.R. § 204.5(m)(2) defines "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

The director, in fact, raised the issue of the beneficiary's religious denomination in the March 2005 request for evidence. In response, [REDACTED] stated that the beneficiary "has been a member of The Body of Christ since at least 1999." This is evidently a reference to the beneficiary's affiliation with the Christian religion. This does not mean, however, that the beneficiary was a member of the same religious denomination since 1999, as there are numerous religious denominations within Christianity. The doctrines and ecclesiastical government of the Roman Catholic Church, for instance, are distinct from those of the Lutheran Church, Missouri Synod. [REDACTED] continued: "She was a member of the Lenox Road Baptist Church in Brooklyn since April 2001. . . . She became affiliated with our church in Pennsylvania as a result of being accepted into our Master's Commission program in August of 2003."

The petitioning church, as we have noted, belongs to the Assemblies of God religious denomination. According to the petitioner, the beneficiary did not join the petitioning church until August 2003, barely a year before the petition's September 2004 filing date. From 2001 to August 2003, the beneficiary belonged to Lenox Road Baptist Church, whose letterhead shows the logo of the American Baptist Churches USA, one of numerous denominations under the Baptist heading. Therefore, the beneficiary's denominational affiliation changed from a form of Baptist to Assemblies of God during the two-year qualifying period. This finding, by itself, would have warranted denial of the petition and dismissal of the appeal even if no other grounds had been raised.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.