



U.S. Department of Justice

Immigration and Naturalization Service

CA

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



dec 18 2000 01C1008

File: [Redacted] Office: Texas Service Center

Date: DEC 18 2000

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The Associate Commissioner has discovered evidence which was not considered prior to rendering the previous decision, and, pursuant to 8 C.F.R. 103.5(a)(5), the case will be reopened on Service motion. The appeal will be dismissed.

The petitioner 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), to develop the petitioner's language department. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The director also found that the petitioner had failed to establish its ability to pay the proffered wage.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

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, 2003, 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, 2003, 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 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 first issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m) (1) states, in pertinent part, that:

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 petition was filed on February 16, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from February 16, 1997 to February 16, 1999.

In a letter dated January 30, 1999, the petitioner stated that the beneficiary "has been a tremendous [sic] help to us in starting our Ibo Language Church." On August 30, 1999, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the president of the Living Word Ministries stated that the beneficiary "was ordained for the work of the ministry on November 29, 1997." In a separate letter, the administrator of the Living Word Ministries stated that the beneficiary "was ordained by the body of ministers at Abia, Nigeria in June 1977." The petitioner submitted a photocopy of a "certificate of license" awarded by the Living Word Ministries to the beneficiary on February 24, 1991.

On appeal, the petitioner submits a photocopy of an ordination certificate awarded by the Gospel Expanders Mission to the beneficiary on November 25, 1995. Counsel contends that "the Beneficiary meets the requirements of two years of experience as an ordained minister of the Christian religious faith prior to the filing of the I-360 Petition in February 1999." Contrary to counsel's assertions on appeal, the petitioner has not established the beneficiary's two years of continuous religious work experience. The evidence submitted in support of this petition has been incomplete and contradictory. The petitioner has submitted documents which indicate that the beneficiary was ordained on four separate occasions. The petitioner has not provided any description of what was required of the beneficiary prior to receiving any of these ordinations. The simple issuance of a document entitled "certificate of ordination," which is not based

on specific theological training or education, does not prove that an alien is qualified to perform the duties of a minister or pastor. See Matter of Rhee, 16 I&N Dec. 607, 610 (BIA 1978). Moreover, the petitioner has not provided any explanation for why the beneficiary was ordained on four separate occasions, by two different organizations. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

The petitioner submits a letter from a representative of the Gospel Expanders Mission who states that "to the best of my knowledge, [the beneficiary] has toured around many states in our dear country, both the remote areas with the gospel of our LORD JESUS CHRISIST [sic] in season and out of season so faithfully and in contêmpment [sic]." The petitioner has not submitted any evidence to establish that the beneficiary was engaged in full-time work as a minister in Nigeria. This letter submitted on appeal cannot be considered documentary evidence of continuous employment as a minister since even the author of the letter does not claim to have first-hand knowledge of the beneficiary's activities.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from February 16, 1997 to February 16, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that it will pay the beneficiary an annual salary of \$34,500.00. On August 30, 1999, the director requested that the petitioner submit evidence of its ability to pay the beneficiary's salary. In response, the petitioner submitted photocopies of bank statements. On appeal, counsel contends that "the Beneficiary will be compensated as set out in the letter from" the petitioner. The petitioner submits photocopies of bank statements. The evidence submitted in support of this petition is not sufficient. The bank statements may demonstrate how much money

the petitioner had on a given date; however, they do not indicate what debts the petitioner was obliged to pay. Further, 8 C.F.R. 204.5(g)(2) provides a list of documents that may be submitted to support a petitioner's claim to be able to pay a wage. The petitioner has not submitted any of these documents. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

Beyond the decision of the director, the petitioner has failed to establish the beneficiary's two-year membership in its denomination as required at 8 C.F.R. 204.5(m)(1). Also, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Further, the petitioner has failed to establish that it is a qualifying, tax-exempt religious organization as required at 8 C.F.R. 204.5(m)(3) or that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

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.

ORDER: The appeal is dismissed.