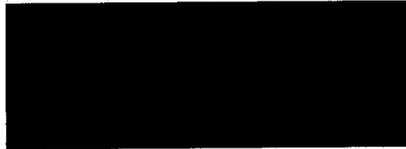




U.S. Department of Justice
Immigration and Naturalization Service

C-1

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



File: WAC-95-244-50758 Office: California Service Center Date: SEP 19 2000

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

Petition: [Redacted]

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly
Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was approved by the Director, California Service Center. After further review of the record, the District Director, San Francisco, California determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. 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 serve as a translator. The director revoked the approval of 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 that the prospective occupation is a religious occupation or that it was a non-profit, religious organization.

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, 2000, 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, 2000, 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 September 11, 1995. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from September 11, 1993 to September 11, 1995.

In its letter dated August 23, 1995, the petitioner stated that the beneficiary "has been employed by the Church as a full-time member of the Italian translation team . . . since September, 1994."

The petition was approved. On October 27, 1997, the beneficiary filed Form I-485, Application to Register Permanent Residence or Adjust Status. A Form G-325A, Biographic Information, accompanied the Form I-485. According to the Form G-325A, which was completed by the beneficiary on September 5, 1997, the beneficiary worked as a teacher in Rome from April 1991 to December 1993 and then as a translator for the petitioner from August 1994 to the date of filing. In a letter dated September 14, 1998, the petitioner stated that the beneficiary "has been employed by the Fellowship of Friends since October 17, 1994."

On July 1, 1999, the district director advised the petitioner of his intent to revoke the approval of the petition. 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 petitioner's former counsel stated that "the petitioner and the beneficiary wish to present evidence that the beneficiary had performed continuous duties for the Fellowship of Friends since he became a member in 1992." No such evidence was submitted.

On appeal, counsel argues that the "Service improperly excludes volunteer services as qualifying religious work in a religious vocation or occupation . . . [and the beneficiary] has the two years experience as required by the Act and the Regulations."

Counsel submitted letters from several individuals and the beneficiary in which the beneficiary's volunteer duties for the petitioner were discussed. In a separate statement counsel continues:

The Service's exclusion of unpaid religious work from meeting the two-year requirements is at odds with the "religious worker" immigration classification as a whole and the right to the Fellowship and its members to define their own standards, based upon their religious beliefs and practices, of what a religious "vocation" or "occupation" is. What if a religious organization had no paid workers, and everyone was a "volunteer." Would the Service deny a priest, brother or nun two years of religious "vocation" because they were not "paid"? . . . the Service cannot blindly eliminate unpaid religious work from the two year standard.

Counsel's arguments are unpersuasive. Neither the statute nor the regulations stipulate an explicit requirement that the work experience must have been full-time paid employment in order to be considered qualifying. This is in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The regulations therefore recognize a distinction between someone practicing a life-long religious calling and a lay employee. The regulation defines religious occupations, in contrast, in general terms as an activity related to a traditional religious function. *Id.* In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of full-time salaried employment. See 8 C.F.R. 204.5(m)(4). Therefore, the prior work experience must have been full-time salaried employment in order to qualify as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in such an occupation.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from September 11, 1993 to September 11, 1995. 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 prospective occupation is a religious occupation.

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

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.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In its letter dated August 23, 1995, the petitioner stated that the beneficiary "has an exceptional ability to translate the religious concepts into Italian." In a letter dated September 24, 1998, the petitioner stated that the beneficiary will also "be responsible for overseeing the gathering, editing, and publication of translated materials."

The director determined that the prospective occupation was not a religious occupation, and revoked the approval of the petition. On appeal, counsel submits letters from several members of the

petitioner's organization. These individuals all attest to the difficulty in translating various writings into the Italian language. According to [REDACTED] a translator must be able "to grasp the spiritual nuances which must be translated."

While it may be difficult to translate nuances and parables from one language to another, the petitioner has not submitted any evidence that the beneficiary was required to undergo any specific religious training prior to qualifying for the job of translator. Rather, it appears that the beneficiary's grasp of both the English and Italian languages is what qualifies him for the position. There is no evidence in the record to the contrary. The performance of secular duties in a religious environment is not equivalent with the performance of a religious occupation. As such, the petitioner has failed to establish that the position of translator is a religious occupation.

The next issue to be examined is whether the petitioning organization meets the requirements of 8 C.F.R. 204.5(m)(3), which in pertinent part, states that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organizations's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

The petitioner submitted a letter dated November 3, 1975, from the Internal Revenue Service ("IRS"), which advised the [REDACTED] that it was a tax-exempt organization because it was a religious organization. This letter was mailed to [REDACTED]

On appeal, counsel states that the petitioner has established that it is a non-profit religious organization. Counsel submits a photocopy of the letter dated November 3, 1975. Contrary to counsel's assertion, the petitioning organization has not established that it has been granted an exemption by the IRS. The letter granting tax-exempt status was mailed to an address that is not currently being used by the petitioner. There is no evidence in the record that the [REDACTED] that received

recognition as a religious organization is the same organization as the petitioner. Accordingly, the petitioner has not met the requirements at 8 C.F.R. 204.5(m)(3).

Counsel also requests oral argument based on the "complex legal and factual issues in this appeal." A request for oral argument must set forth facts explaining why such argument is necessary to supplement the appeal. 8 C.F.R. 103.3(b). After review of the record and the statements made on appeal, the Service finds that the request fails to set forth facts explaining why such argument is necessary, and the request must therefore be denied.

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.