

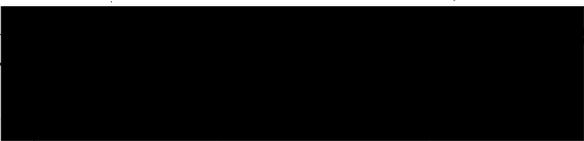


U.S. Department of Justice

Immigration and Naturalization Service

CI

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



Public Copy

File: WAC-99-021-50182 Office: California Service Center

Date: AUG 1 2001

IN RE: Petitioner:
Beneficiary:



Petition: 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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It 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), in order for her to serve as an "evangelist."

The director denied the petition finding that the petitioner failed to establish that it had tendered a qualifying job offer specifying the terms of remuneration and that the beneficiary's claimed volunteer work with the petitioner does not satisfy the requirement of at least two years of continuous experience in a religious occupation.

On appeal, counsel for the petitioner submitted a written brief and additional documentation. Counsel argued that the evidence now submitted demonstrates that the requirements have been satisfied.

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 petitioner in this matter is a church and is recognized by the Internal Revenue Service as a tax exempt religious organization. The beneficiary is described as a native and citizen of Korea who was last admitted to the United States on October 6, 1996, in an unstated classification, and has remained in the United States since such time. The petitioner claimed that the beneficiary has never been employed in the United States. Her current immigration status is unknown.

In order to establish eligibility for classification as a special immigrant religious worker, a petitioner must satisfy several eligibility requirements.

The first issue is whether the petitioner has established that a qualifying job offer has been tendered.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner did not identify any terms of remuneration for the proposed position or shown that the alien would not be dependent on supplemental employment. The director advised the petitioner that a wholly voluntary position, even if at a full-time level, was not considered a qualifying job offer under the special immigrant provisions.

On appeal, counsel stated that the petitioning church is large and clearly has the ability to remunerate the beneficiary.

Counsel apparently misunderstood the basis for denial. It was not the ability to pay a salary, but a qualifying job offer specifying the terms of remuneration. The petitioner has not specified the terms of remuneration and therefore has not tendered a qualifying job offer. For this reason, the petition may not be approved.

The next issue is whether the petitioner has established that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

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 October 26, 1998. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least October 26, 1996.

The petitioner originally asserted that the beneficiary "worked" as an evangelist for an affiliated church in Seoul, Korea from February 1994 to March 1996 and that she had voluntarily served as an evangelist with it since entering the United States in October 1996.

The director held that the claim of two years of voluntary work did not satisfy the requirement.

On appeal, counsel argued that the prior claim was in error and that the beneficiary has been continuously employed by the foreign church through the date the petition was filed.

The argument is not persuasive. First, the petitioner has advanced contradictory testimony. The petitioner originally claimed that the beneficiary was not employed while in the United States and that she was supported by her husband who remained in Korea. The petitioner now claims that the beneficiary was employed in the United States in some undisclosed capacity by her church in Korea. 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 (BIA 1988).

Second, the claim that the beneficiary maintained her alleged employment and salary with the foreign church for a period of two years while residing in the United States was made without any explanation of these unusual circumstances. The Service cannot entertain such a claim absent some sort of credible explanation for these generous employment terms.

Third, the petitioner offered no contemporaneous proof, such as tax records etc., that the beneficiary has ever been employed in any capacity. Merely going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Accordingly, the petitioner has failed to establish that the beneficiary was continuously carrying on a religious occupation for the two years preceding the filing of the petition. For this

reason as well, the petition may not be approved.

As that the petitioner has failed to overcome the grounds for denial of the petition, the appeal must be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.