



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

AUG 1 2001

File: EAC-00-127-52059 Office: Vermont Service Center Date:

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

Megan L. Rosevear
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner is described as a church. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as a pastor at an annual salary of \$52,000.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition and failed to establish that it had the ability to pay the proffered wage.

On appeal, counsel for the petitioning church stated that the Service erred in reviewing the evidence of the beneficiary's experience and submitted a letter from its accountant as proof of the ability to pay the wage.

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 described as a church. The beneficiary is described as a native and citizen of Ghana who was last admitted to the United States on March 20, 1999, in an undisclosed classification. The record reflects that the beneficiary remained beyond any period of authorized stay and has resided since such time in an unlawful status. The petitioner failed to disclose at the space provided on the petition form whether the beneficiary has been employed in the United States without authorization.

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

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

8 C.F.R. 204.5(m)(3) states, in pertinent part, 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; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

In addressing this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated May 5, 1998, reflecting that the Christian Action Faith Ministries International (CAFMI) of Columbia, Maryland, and its identified subordinates, was granted tax exempt recognition under section 501(c)(3) of the Internal Revenue Code (IRC). The two recognized subordinates were identified as the Action Chapel International of Columbia, Maryland and the Action Chapel International of Washington, D.C.

There is no direct evidence that the petitioner, the Pentecostal Churches of Christ of Hyattsville, Maryland is formally affiliated with the CAFMI or that it receives tax exempt recognition through the CAFMI's group tax exemption. For this reason, the petition may not be approved.

A petitioner must also establish that the beneficiary is qualified

as a minister as defined in these proceedings.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

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

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.

The petitioner claimed that the beneficiary has served as a minister since 1989, both in Ghana and in the United States. The petitioner submitted two "certificates of ordination." The first certificate reflected that the beneficiary was ordained by the Word Based International Church, the location of which was not indicated, on August 29, 1992. The second certificate indicates that the beneficiary was ordained by the Action Chapel International Church, Inc., of South Bend, Indiana on December 12, 1999. The petitioner also submitted a certificate reflecting that the beneficiary completed an 11-month course in Discipleship Training and Charismatic Oriented Bible Education from the Action International Bible School of Accra, Ghana on April 30, 1989.

The evidence of record is insufficient to establish that the beneficiary is a qualified minister of religion. First, the petitioner has not explained the standards required to be recognized as a minister in its denomination or shown that the beneficiary has satisfied such standards.

Second, the petitioner has not shown the structure of its organization or established who in the organization is authorized to recognize the alien's credentials as a minister. The claim that the beneficiary is a qualified minister from an official of the individual petitioning church is not sufficient. Simply 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).

Third, simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. Matter of Rhee, 16 I&N Dec. 607 (BIA 1978).

Fourth, the petitioner's documentation reflects that the petitioner is a small independent church in the Washington, D.C. area. There is no evidence of an affiliation with the Action Chapel International in South Bend, Indiana or any explanation of the basis on which this organization issued a certificate of ordination. This constitutes an inconsistency in the petitioner's testimony. 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).

Fifth, there is no evidence that the beneficiary has attained the level of theological education normally associated with recognition as a member of the clergy in most religious denominations. An 11-month course is usually not sufficient. As stated in the regulation, a "lay preacher" is not considered to be a "minister" for the purpose of special immigrant classification.

Accordingly, it must be concluded that the petitioner has failed to establish that the beneficiary is a qualified minister of religion. For this reason as well, the petition may not be approved.

A petitioner must demonstrate that the beneficiary has been a member of its religious denomination for the two years preceding the filing of the petition.

8 C.F.R. 204.5(m) (3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of

membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

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

Religious denomination means 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. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

The petition was filed on March 20, 2000. Therefore, the petitioner must establish that the beneficiary had been a member of its denomination since at least March 20, 1998.

In this case, the evidence submitted reflects that the petitioner is an independent inter-denominational religious organization comprised of two or three affiliated churches in the Washington, D.C. area. It will therefore be treated as a religious denomination for the purposes of this proceeding. There is no evidence of any formal affiliation of the CAFM with entities in Ghana. The beneficiary was alleged to have entered the United States in March 1999. Therefore, he could not have accrued the requisite two years of membership since March 1998 with the United States petitioner. For this reason as well, the petition may not be approved.

A petitioner must also establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

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.

In the case of special immigrant ministers, it was held in Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986) that the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the

benefit sought and must intend to be engaged solely in the work of a minister of religion.

The petition was filed on March 20, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least March 20, 1998.

In this case, the petitioner submitted a letter from the Bethel Ministries, Inc., stating that the beneficiary "was employed as a Senior Pastor of Chosen Champion Chapel from June 1989 to December 1998" in Ghana. The petitioner also stated that the beneficiary has served as a minister since entering the United States.

On review of the record, it must be concluded that the petitioner has failed to satisfy the requirement. First, as noted above, the record is insufficient to establish that the beneficiary is qualified as a minister. Therefore, any religious work he may have engaged in is not considered to be carrying on the vocation of a minister.

Second, there is no contemporaneous documentation to show that the beneficiary was engaged in the vocation of a minister either in Ghana or in the United States. The Service has no means to verify the letter from the Bethel Ministries in Ghana and the letter from the pastor of the individual petitioning church is considered insufficient. The petitioner also submitted photographs allegedly of the beneficiary performing the duties of a minister, such as teaching children and presiding at marriages. Again, the Service has no means to verify this type of evidence. 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).

Third, the petitioner failed to submit a comprehensive explanation of the beneficiary's means of financial support or contemporaneous evidence of past employment such as tax returns, licenses, or affidavits from disinterested credible parties.

Finally, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period or that he would be solely engaged as a minister with the petitioning church.

Accordingly, it cannot be concluded that the petitioner has established that the beneficiary was solely and continuously carrying on the vocation of a minister since at least March 1998. For this reason as well, the petition may not be approved.

It is noted that 8 C.F.R. 204.5(m)(4), requires that the job offer

for a minister clearly establish that the alien will be solely carrying on the vocation of a minister. The petitioner has not satisfied this requirement and the petition may not be approved on this basis as well.

A petitioner must also demonstrate its ability to pay the proffered wage.

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

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 wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner in this case submitted a balance sheet, various internal financial receipts, and a letter from its accountant as proof of the church's financial resources. These documents do not satisfy the regulatory requirement. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not established the ability to pay the proffered wage. For this reason as well, the petition may not be approved.

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.