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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

AUG 3 2001

File: EAC-00-072-51105

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

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 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 to employ her as a "missionary" at an annual salary of \$10,400.

The director denied the petition finding that the petitioner failed to establish that the beneficiary would be employed in a qualifying religious occupation.

On appeal, the petitioner stated that the position of missionary is standard in all Protestant churches and submitted an additional letter describing the duties of the position.

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 an independent church claiming a congregation of 200 members. The beneficiary is described as a native and citizen of Jamaica who was last admitted to the United States on January 10, 1993, as a B-2 visitor for pleasure. The record reflects that the beneficiary has continued to reside in the United States since such time in an unlawful status.

At issue in this proceeding is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

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.

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(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

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.

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

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. 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 and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. 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.

The petitioner in this matter has submitted three letters listing the duties of the proposed position that it titles as "missionary." The list of duties in each of the three letters is inconsistent. The first letter, dated December 27, 1999, lists five duties including visiting the sick, providing Bible counseling and studies, conducting worship services, and administering Holy communion. The second letter, submitted in response to a request from the director, lists duties including organizing clothes drives for the needy, working at a food kitchen, visiting orphanages, and providing spiritual and social counseling. The third letter,

submitted on appeal, lists duties including organizing projects in the community, encouraging others in "prayer life," witnessing, and "enlistment for church growth and development."

On review of the record, it must be concluded that the petitioner has failed to overcome the director's objections. First, the petitioner has submitted inconsistent descriptions of the duties of the proposed position of missionary. Based on this inconsistency, it must be concluded that the petitioner has failed to satisfy its burden of proof. 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).

For example, duties such as conducting worship services and administering communion are normally reserved for members of the clergy and are not delegated to lay missionaries. The petitioner did not provide a detailed and consistent explanation of the role of a missionary in its church or distinguish the role of missionary from the role of a minister. It is noteworthy that the petitioner also submitted a certificate stating that the beneficiary was ordained as a "Minister of Christ" on December 22, 1999, but the petitioner did not seek classification of the beneficiary as a minister.

Second, duties such as working in food kitchens and other charitable activities are considered wholly secular functions not requiring specific religious training and thereby not qualifying as a religious occupation.

Third, duties such as "encouragement in prayer life" and "enlistment in church growth" were stated without an explanation of what those functions entail. The Service has no means to evaluate whether a job description satisfies the regulations where the actual duties of the position are not clearly articulated.

Fourth, the petitioner failed to show that the position of missionary required any specific religious training. The petitioner asserted that the beneficiary completed four separate courses in religious topics. However, the petitioner failed to provide any information on the nature of those classes, the institution that sponsored the classes, the number of hours involved, or show that these classes are specifically required for recognition as a missionary. 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).

The petitioner has not established that the beneficiary has been or

would be engaged in a qualifying religious occupation. Merely conferring an honorific title to an active member of a religious congregation does not establish that the member is engaged in a qualifying religious occupation for the purpose of special immigrant classification.

The petition is deficient on additional grounds. The job offer for a special immigrant religious worker must establish that the beneficiary will not engage in supplemental employment. See 8 C.F.R. 204.5(m)(4). The petitioner offered no statement and submitted no evidence that the beneficiary would not engage in supplemental employment. A petitioner must submit its federal tax returns, audited financial statements, or annual reports to establish its ability to pay the proffered wage. 8 C.F.R. 204.5(g)(2). The petitioner has not satisfied this documentary requirement. A petitioner must also show that the beneficiary is qualified to perform a religious occupation. See 8 C.F.R. 204.5(m)(3)(ii)(D). There is no evidence that the beneficiary has any specific religious training or theological education. The petitioner must establish that the beneficiary has the requisite continuous work experience in a qualifying religious occupation for the two years preceding the filing of the petition. 8 C.F.R. 204.5(m)(3)(ii)(A). There is no claim and no evidence to establish that the beneficiary was continuously engaged in a religious occupation for the two years preceding filing. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.