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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



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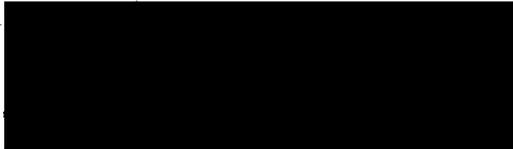
Office: Nebraska Service Center

Date: AUG 3 2001

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 (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

for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

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

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 continue to employ her as a "Lay Ministry Leader" at an annual salary of \$19,200.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had been employed in a qualifying religious occupation for at least the two years preceding filing of the petition as required and failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification.

On appeal, counsel for the petitioner submitted a written brief and additional documentation. Counsel asserted that the center director's request for additional evidence failed to specify the documentation necessary to establish eligibility and argued that such documentation is now being submitted.

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 affiliated with the Assemblies of God denomination and has the appropriate tax exempt recognition through that affiliation. The beneficiary is a native and citizen of Honduras who has resided in the United States since at least August 3, 1998, in R-1 classification as a temporary religious worker authorized for employment with the petitioner.

The first issue raised by the director 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 January 28, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least January 28, 1998.

The petitioner initially claimed that it had employed the beneficiary in the proffered position since August 1997. The director found that the petitioner's uncorroborated testimony was insufficient to establish its claim of having employed the beneficiary.

On appeal, counsel furnished detailed copies of payroll records and tax records sufficient to demonstrate that the beneficiary had been employed by the petitioner as claimed. Therefore, the director's objection on this issue has been overcome. The additional issue of whether the beneficiary was employed without authorization is not material to the adjudication of this visa petition.

The next 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) (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.

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. As noted by counsel, 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.

On appeal, counsel furnished, in pertinent part, detailed statements from the petitioner concerning the duties of the position and the religious training required for the position. The petitioner also furnished written verification from an official of the denomination that the position of Lay Ministry Leader is recognized as a permanent salaried position within the denomination. After a careful review of the evidence of record, it may be concluded that the petitioner has overcome the director's objection on this issue.

The petitioner has overcome the grounds for denial of the visa petition. There are no other known grounds of ineligibility.

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 been met.

**ORDER:** The appeal is sustained.