



C1

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 09 2001

File: [Redacted] Office: Nebraska Service Center

Date:

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: [Redacted]

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*  
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 dismissed.

The petitioner is 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 minister at an annual salary of \$18,000.

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 filing of the petition.

On appeal, an official of the petitioning church submitted a statement asserting that the beneficiary has been a minister for 23 years, and that he has been voluntarily serving the petitioning church since January 1999. The official further indicated that a written brief would be submitted within thirty days. However, as of this date, no brief has been received by the Service.

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 affiliated with the Assemblies of God denomination. It was described as a new church with 30 to 40 members. The beneficiary is a native and citizen of Guatemala who was last admitted to the United States on April 10, 1999, as a B-2 visitor.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy several eligibility requirements. They will be examined in turn.

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 August 31, 1964, reflecting that the General Council of the Assemblies of God, headquartered in Springfield, Missouri, and its member churches, was granted tax exempt recognition under section 501(c)(3) of the Internal Revenue Code (IRC).

On review, there is no direct evidence that the prospective employer, the Christian Life Center, is recognized as a member church by the General Council of the Assemblies of God denomination or that it is eligible for tax exempt status through the denomination's group tax exemption. On this basis, 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 claims to be affiliated with an established religious denomination, the Assemblies of God. The petitioner asserted that the beneficiary completed a course in Bible studies and was ordained as a minister in Guatemala in 1970. The petitioner furnished a "certificate of ordination" and several ministerial identity cards to support the claim.

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

Second, the petitioner did not provide a letter from an authorized official of the denomination in the United States recognizing the beneficiary's credentials and authorizing him to perform the duties of a minister at its member churches in the United States. The two statements submitted by the petitioner, one in its own behalf from an official of the individual church and one from an official of the "Latin district" organization, have not been shown to be from authorized authorities of the denomination and cannot be accorded the necessary evidentiary weight.

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).

On this basis 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 May 23, 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 May 23, 1998.

In this case, an official of the petitioning church testified that the beneficiary had been a minister in Guatemala for more than 20 years and has served the petitioning church as a minister since entering the United States in January 1999.

On review, it must be concluded that the petitioner failed to establish its claim. First, the petitioner's own unsubstantiated testimony is insufficient to establish the requisite two years of prior work experience. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Second, the petitioner failed to furnish contemporaneous documentation demonstrating that the beneficiary was continuously engaged in the vocation of a minister in Guatemala, such as tax records or written verifications from authorized officials of the denomination in that country.

Third, the petitioner failed to furnish contemporaneous documentation demonstrating that the beneficiary has been continuously engaged in the vocation of a minister in the United States. For example, the petitioner failed to submit the beneficiary's travel documents as proof of his alleged admission to the United States in January 1999 and failed to submit

contemporaneous evidence such as tax records showing that he has been continuously employed as a minister in this country.

Finally, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion in both Guatemala and the United States or that he would be engaged solely as a minister at the new church with only 30 to 40 members.

On this basis as well, the petition may not be approved.

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 submitted various internal financial summaries 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 its ability to pay the proffered wage.

The petitioner furnished a letter from Jose Leyva, Superintendent, Central Latin American District Council of the Assemblies of God indicating that it will support the beneficiary. However, the petitioner did not establish that the Latin district organization is able to pay the proffered wage or that the affiant is authorized to enter into an agreement to pay the alien's wage. On this basis 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.