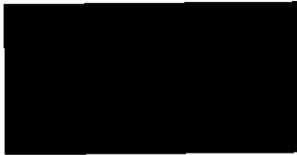




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U.S. Department of Justice  
Immigration and Naturalization Service

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



Public Copy

File: EAC-00-072-51095 Office: Vermont Service Center Date: AUG 14 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: [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*  
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."

The director denied the petition finding that the petitioner failed to specify any terms of remuneration and thereby failed to tender a qualifying job offer. The director further found that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification.

On appeal, an official of the petitioner asserted that the salary offered is \$14,000 and submitted additional documentation.

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).

At issue 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) (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.

The primary duty of the proposed position of missionary was described as providing Bible study, prayer and counseling to the residents of the Fairfield Manor Nursing Home. There is no formal or legal affiliation indicated between the nursing home and the petitioning church.

The petitioner also furnished a letter from the Director of Volunteers of the nursing home verifying that the beneficiary has been a volunteer at the facility helping the staff in feeding the residents. It was also stated that the beneficiary "visits many of the residents and ministers and reads to them."

The petitioner bears the burden to establish eligibility in visa petition proceedings. In this case, the record does not demonstrate that the petitioning church could or would employ a "missionary" to minister on a full-time basis to the residents of a private commercial nursing home or that such a position would qualify for special immigrant classification.

First, the statute requires that the alien seek admission in order to work for the church, or an organization affiliated with the church. The nursing home is not a religious organization and is not affiliated with the petitioning church.

Second, the petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. The petitioner's claims must be credible. See Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966); Matter of Semerjian, 11 I&N Dec. 751 (Reg. Comm. 1966).

The petitioner in this matter has not presented any documentation indicating an agreement with the management of the Fairfield Manor Nursing Home that it would accommodate an employee of the church on a full-time permanent basis. Nor did the petitioner, apparently a small church with limited finances, explain its decision to hire the beneficiary in this capacity and to commit its resources to the residents of the nursing home. Absent a comprehensive and credible explanation of the proposed employment, it cannot be concluded that the petitioner has credibly established its intent to employ the beneficiary in the manner described.

After careful review of the record, it must be concluded that the proposed position is not consistent with the intent of the Act and that it is not a qualifying religious occupation.

Beyond the discussion in the director's decision, the petitioner has failed to demonstrate eligibility on other grounds. The petitioner has failed to establish that it is a qualifying organization exempt from, or eligible for exemption from, taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations pursuant to 8 C.F.R.

204.5(m) (3) (i); that it has the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g) (2); that the beneficiary has the requisite continuous work experience in a qualifying religious occupation for the two years preceding the filing of the petition pursuant to 8 C.F.R. 204.5(m) (3) (ii) (A); or that the beneficiary is qualified to perform a religious occupation pursuant to 8 C.F.R. 204.5(m) (3) (ii) (D). 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, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.