



CA

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-99-230-51921

Office: Vermont Service Center

Date: AUG 14 2001

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

  
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 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 him as a "lay minister" at an annual salary of \$16,000.

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

On appeal, counsel for the petitioner argued that the beneficiary has religious training and has been employed by the petitioner in a religious occupation.

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 United States Catholic Conference and is recognized as a qualifying tax exempt organization. The beneficiary is described as a native and citizen of Mexico who last entered the United States in July 1988, without inspection by an immigration officer. The record indicates that the beneficiary has resided since such time in an unlawful status.

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

At issue in this matter 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.

\*

\*

\*

(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.

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 duties of the proposed position of lay minister were described, in part, as including: planning activities for children, preparation of children for the sacraments, preparation of parents for baptism, and evangelizing in the Spanish-speaking community. The petitioner asserted it has employed the beneficiary in this full-time capacity since May 1995 and submitted copies of his 1997, 1998, and 1999 W-2 tax forms to support the claim.

The regulation defining a qualifying religious occupation is worded in a broad manner. This is to accommodate the range of religious occupations in various religious traditions. In evaluating a claim for special immigrant classification, the Service must look beyond the title of a position. The Service must look at the duties of

the position, the sufficiency of evidence submitted, and the credibility of the claim. The level of theological education or the duration of religious training is only one factor to be considered.

The duties of the beneficiary are essentially those of a pastoral assistant, with specific duties in translating for the pastor to the Spanish-speaking members of the congregation. It was stated that the beneficiary has taken catechetical classes from the archdiocese of the denomination in order that he may assume additional responsibilities.

After a review of the record, it must be concluded that the petitioner has failed to establish that a lay minister is a recognized religious occupation. First, the petitioner did not explain whether the position of lay minister is a traditional religious occupation in its denomination or if it was a newly created position to address specific needs of the petitioning church.

Second, the petitioner did not provide any documentation from an authority of this religious denomination showing that the position is a traditional religious occupation and that lay persons receive specific training and are employed as lay ministers in the Catholic church. The testimony from an official of the individual church filing the petition, without supporting documentary evidence, is not sufficient in meeting the burden of proof. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Third, the petitioner did not provide a comprehensive description of the beneficiary's past and proposed duties. The petitioner did not explain the nature of the children's activities for which the beneficiary is responsible. Day-care types of activities, even when sponsored by a church, are considered wholly secular and not qualifying for a religious occupation. Nor did the petitioner explain the time commitment required in preparing congregants for the sacraments of the denomination. There is no indication that the time commitment of that activity could reach the level of 35 to 40 hours per week considered to be a full-time level. Nor was there any explanation of the nature of the duty of "evangelizing" to the Spanish-speaking community. Absent a detailed description of the duties of the position, the petitioner cannot sustain its burden of proof.

The fact that the beneficiary is a valuable employee of the church is not questioned. However, there is no evidence to establish that the position of lay minister with responsibilities for translation is a traditional religious occupation in the Catholic denomination. The petitioner also failed to establish that it requires specific religious training or that it is traditionally a full-time permanent paid position in the denomination. Therefore, it must be

concluded that the petitioner has failed to overcome the grounds for denial.

A review of the evidence submitted raises additional questions regarding the facts alleged. The beneficiary's W-2 forms reflect that he has been employed by the Ascension Parochial School. There is no evidence that the parochial school is a qualifying religious organization pursuant to sections 501(c)(3) and 170(b)(1)(A)(i) of the Internal Revenue Code, even though it is affiliated with the church. Because a school is not a qualifying employer, a position as a teacher, religious instructor, or translator in a parochial school is not normally eligible for special immigrant classification within the meaning of the Act and experience in such a capacity is not qualifying experience in a religious occupation.

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.