



U.S. Department of Justice

Immigration and Naturalization Service

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



PUBLIC COPY

AUG 23 2001

File: EAC-00-178-53209 Office: Vermont 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as a convent. 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 "musical evangelist" at a salary of \$16,400 per year.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had had two years of continuous experience in a religious occupation as required. The director held that the beneficiary's claimed part-time voluntary experience with the petitioner, while engaged in a full-time secular occupation, did not satisfy the requirement that he have been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submitted a written brief arguing, in pertinent part, that the beneficiary has been in valid nonimmigrant status that prohibited outside employment and requested reconsideration of the decision.

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 convent claiming affiliation with the United States Catholic Conference. The beneficiary is described as a native and citizen of India last admitted to the United States on September 7, 1999, in A-2 classification as an employee of the Indian government.

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

At issue in this proceeding 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 May 17, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least May 17, 1998.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding the filing of the petition. The regulations are silent on the question of part-time volunteer work satisfying the requirement. In order to qualify for special immigrant classification in a religious occupation, however, the job offer for a lay employee of a religious organization must show that he or she will be employed in salaried employment sufficient to establish that he or she will not be dependent on supplemental employment. See 8 C.F.R. 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets the regulations to require that the prior experience have been salaried employment as well. The absence of specific statutory language requiring that the two years of work experience be full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in such an occupation. Accordingly,

incidental volunteer activities do not constitute qualifying work experience in a religious occupation within the meaning of section 101(a)(27)(C) of the Act.

Furthermore, in evaluating a claim of prior work experience, the Service must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. Nor is there any means for the Service to verify a claim of past "volunteer work" similar to verifying a claim of past employment. In this case, it must be concluded that the beneficiary has been engaged in a secular occupation as a government employee and that his participation in activities with the convent did not constitute engaging in a 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 proposed position constitutes a qualifying religious occupation pursuant to 8 C.F.R. 204.5(m)(2); 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.