

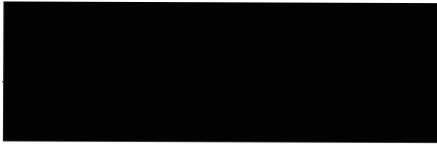


U.S. Department of Justice

Immigration and Naturalization Service

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



File:  Office: Texas Service Center

Date: JAN 29 2001

IN RE: Petitioner: 
Beneficiary: 

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



PUBLIC COPY

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.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

May C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an individual who seeks classification 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), to serve as a music director. The director denied the petition determining that the petitioner had failed to establish her membership in her prospective employer's denomination for at least two years prior to filing.

On appeal, counsel argues that the petitioner is eligible for the benefit sought.

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 is a twenty-six-year-old married female native and citizen of Brazil. The petitioner indicated that she entered the

United States as a visitor on October 19, 1998 and that her authorized period of admission expired on November 16, 1999. The petitioner further indicated that she had never worked in the United States without permission.

At issue in the director's decision is whether the petitioner has established that she has been a member of her prospective employer's denomination for the two-year period prior to filing.

8 C.F.R. 204.5(m) (1) states, in pertinent part:

An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b) (4) of the Act as a section 101(a) (27) (C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.

8 C.F.R. 204.5(m) (2) defines a religious denomination as:

a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

The petition was filed on November 15, 1999. The petitioner must therefore establish her membership in her prospective employer's denomination from at least November 15, 1997 to November 15, 1999.

In a letter dated November 11, 1999, [REDACTED] the president of More Than Conquerors Ministries, stated that the petitioner "has been a member of this Church sin[c]e the last year . . . [She] gained most of her 10 years experience . . . at the Independent Presbyterian Church in Brazil within the years of 1985 thru 1995." In a letter dated February 2, 1999, representatives of the Independent Presbyterian Church in Brazil stated that the petitioner "has been a member . . . since she was a new-born." The petitioner submitted a photocopy of her prospective employer's By-laws.

On May 10, 2000, the director requested that the petitioner submit additional information. In response, Mr. [REDACTED] stated that "More Than Conquerors Ministries and Igreja Presbiteriana Independente de Bela Vista in Brazil has maintained a strong affiliation and

relationship in that we have the same 'Christian Philosophy and teachings of our Lord Jesus Christ'." A pastor at the Independent Presbyterian Church stated that his church "and More Than Conquerors Ministries, Inc. in U.S.A., stand together in the same almighty God and proclaim the same good news that Jesus is the Lord, he is the only way, the truth and the life."

On appeal, counsel argues that the evidence submitted establishes that the church in Brazil and the petitioner's prospective employer are "of the 'Christian Faith' and are believers and proclaim the same good news of the Lord Jesus Christ." The petitioner submits another photocopy of More Than Conquerors Ministries' By-laws. Contrary to counsel's assertion, the petitioner has not established that she has been a member of her prospective employer's denomination for at least the two-year period prior to filing. Both the Brazilian church and the Florida church claim to adhere to the "Christian Faith." This alone, however, does not indicate denominational affiliation. Baptists and Methodists consider themselves to be "christians" but do not consider themselves to belong to the same denomination. The petitioner has not submitted any evidence that the two churches in question share some form of ecclesiastical government, a creed or statement of faith, or have similar religious services and ceremonies. As such, the petitioner has failed to meet the requirements at 8 C.F.R. 204.5(m)(1).

Beyond the decision of the director, the petitioner has failed to establish her two years of continuous religious work experience as required at 8 C.F.R. 204.5(m)(1) or that her prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2). Also, the petitioner has failed to establish that she is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3) or that she received a valid job offer as required at 8 C.F.R. 204.5(m)(4). As the appeal will be dismissed on the ground 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.