



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: EAC-98-160-52068 Office: Vermont Service Center

Date: JAN 30 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, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



**PUBLIC COPY**

Identification 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

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. The matter 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), to serve in a pastoral position. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The director also found that the petitioner had failed to establish that it had made a valid job offer to the beneficiary or that it had the ability to pay the proffered wage.

On appeal, counsel argues that the beneficiary 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 beneficiary is a seventy-year-old married male native and citizen of Nigeria. The petitioner indicated that the beneficiary entered the United States as a visitor on July 4, 1997 and that his authorized period of admission expired on July 3, 1998. The petitioner further indicated that the beneficiary had never worked in the United States without permission.

The first issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

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 June 3, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from June 3, 1996 to June 3, 1998.

In a letter dated January 9, 1998, the petitioner stated that:

Since his ordination in 1978, [the beneficiary] has been working fulltime [sic] as a priest, performing sacramental and pastoral duties including, but not limited to, conducting of religious worship, preaching, visiting the sick, evangelistic and social outreach, and helping the Bishop in the Owerri Diocese of Nigeria.

[The beneficiary] left Nigeria for the United States in July 1997. Upon his arrival in Baltimore, he joined this parish. Currently, he volunteers his services to our church, assisting in conducting religious services, and helping with pastoral work, particularly with African families.

On October 21, 1998, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner stated that "documentation previously submitted refers to [the beneficiary's] duties in Nigeria prior to his arrival at the Cathedral in August 1997. From August 1997 until the filing date of June 3, 1998, [he] served as non-stipendiary clergy at the Cathedral."

The director, found that the beneficiary had not been employed on a full-time basis throughout the qualifying period and denied the petition. Counsel does not address this issue on appeal. In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of full-time salaried employment. See 8 C.F.R. 204.5(m)(4). Therefore, the prior work experience must have been full-time salaried employment in order to qualify as well. The absence of specific statutory language requiring that the two years of work experience be conventional 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. The petitioner has asserted that the beneficiary was performing voluntary, part-time activities at the Cathedral from July 1997 to the date of filing. The petitioner further asserted that the beneficiary worked as a priest in Nigeria prior to his entry into the United States; however, the petitioner did not provide any documentary evidence to support this assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from June 3, 1996 to June 3, 1998. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the petitioner has made a valid job offer.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In a letter dated January 9, 1998, the petitioner stated that the beneficiary "volunteers his services to our church." On October 21, 1998, the director requested that the petitioner submit additional information. In response, the petitioner indicated that

the beneficiary would work at the Cathedral for approximately twenty hours a week. The petitioner further indicated that:

There is no full-time paid position available at the Cathedral for [the beneficiary]. We are delighted to have [him] as a member of our staff and hope to be able to continue to utilize his theological insights and other pastoral attributes. There are no wages or any kind of benefits offered [the beneficiary].

On appeal, the petitioner states that:

Since he has been here, [the beneficiary's] ministry has grown from a part-time to a full-time position (approximately 35 1/2 hours per week) as he serves the increasing number of Igbo and other African people who attend our church . . .

As primary pastor and liturgical leader for the Igbo and Africans of our congregation he receives compensation in the amount of \$16,000 per year . . . His financial package totals \$18,500.

The petitioner initially stated that the beneficiary was working, and would continue to work, as a part-time volunteer at the Cathedral. It was not until after the petition was denied by the director that the petitioner indicated the beneficiary would become a full-time, salaried employee. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. Matter of Izumii, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998). As such, it cannot be concluded that the petitioner extended a valid job offer to the beneficiary.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

*Ability of prospective employer to pay wage.* 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 proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

On appeal, the petitioner indicates that it is willing to pay the beneficiary an annual salary of \$18,500. The petitioner submits an

audited financial statement for the year ended December 31, 1996. A petitioner is required to submit evidence of its ability to pay a wage at the time of filing. The financial statement submitted on appeal was prepared over eighteen months prior to the filing of the petition. The petitioner has not submitted any documentation concerning its financial solvency at the time of filing. Accordingly, the petitioner has not established its ability to pay the proffered wage.

Beyond the decision of the director, the petitioner has failed to establish that the 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 the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). 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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.