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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



File: EAC-99-242-50809

Office: Vermont Service Center

Date: JUL 3 2001

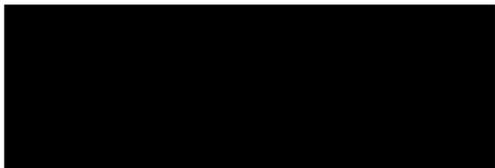
IN RE: Petitioner:  
Beneficiary:



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)

Public Copy

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

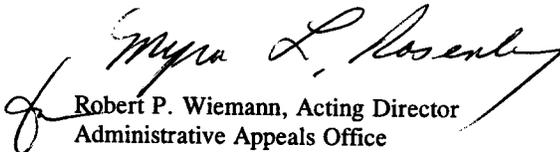
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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

  
Robert P. Wiemann, 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 minister 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 its pastor at a salary of \$26,000 per year.

The center director denied the petition determining that the petitioner failed to establish that the beneficiary had had two years of continuous experience in the proffered position as required, or that church had demonstrated its ability to pay the proffered wage.

On appeal, counsel for the petitioner submitted, in part, a 1998 Form W-2 indicating the beneficiary's employment in the United States and additional financial statements of the church. Counsel argued that the beneficiary was ordained in 1982 and has been continuously engaged in the vocation of a minister since such time.

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). *to establish*

The petitioner submitted documentation that it is a recognized tax exempt religious organization. It was stated that the beneficiary is a native and citizen of Korea who was last admitted to the United States on April 28, 1998, in an undisclosed classification. His current immigration status is unknown.

The first issue is whether the beneficiary satisfies the two year work experience requirement.

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.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested; or

The petition was filed on August 10, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously engaged as a minister of religion since at least August 10, 1997.

Regarding the prior work experience, the petitioner submitted documentation indicating that the beneficiary graduated from a four-year course at a seminary in Korea in 1981 and that he was "nominated" to the [redacted] Seoul, Korea in April 1982. A letter was submitted indicating that he was employed as pastor by the Church of the First Love, Seoul, Korea from January 1994 to April 1998. It was then claimed that the beneficiary was continuously employed by the petitioner, and an affiliated church in New York, since his admission to the United States in April 1998.

In the case of special immigrant ministers, it was held in Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986) that the alien must have been engaged solely as a minister of the religious

denomination for the two-year period in order to qualify for the benefit sought. (emphasis added.)

After a review of the record, it must be concluded that the petitioner has failed to establish eligibility for the benefit sought. First, the petitioner bears the burden to establish that the beneficiary is qualified to perform the functions of a member of the clergy in its denomination. The petitioner has not explained the standards required to be recognized as a minister in its denomination or shown that the beneficiary has satisfied such standards. The petitioner provided no explanation of the meaning of the certificate of "nomination" submitted on appeal.

Second, the petitioner has advanced inconsistent statements. The petitioner submitted an addendum to the petition describing the terms of employment at the two affiliated New York churches stating, in part, "his income was based on voluntary church donations and is variable each week." On appeal, the petitioner submitted a 1998 W-2 Wage and Tax Statement indicating that he was directly employed by the church and earned precisely \$26,000. These statements are inconsistent regarding both the source of the income and the variability in the amount of remuneration. Furthermore, it is claimed that the beneficiary did not enter the United States until April 1998, but the W-2 reflects he earned a full years' wage of \$26,000. The discrepancy in the amount reflected on the W-2 raises serious questions regarding its credibility. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). For these reasons, the director's decision will not be disturbed.

In addition, the petitioner made no claim and submitted no evidence that the beneficiary was engaged "solely" as a minister of religion during the two-year period.

Furthermore, the petitioner appears to be an independent church. There is no evidence to establish that the petitioner and the beneficiary's alleged foreign employer are part of the same religious denomination as defined at 8 C.F.R. 204.5(m)(2). Therefore, the petitioner has failed to demonstrate the requisite two years of denominational membership as well.

The final issue is the petitioner's ability to pay the proffered wage.

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

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. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner stated that the proffered wage in this matter is \$26,000 per year. The petitioner submitted internal financial statements to demonstrate its financial ability to pay the proposed salary. These documents do not satisfy the documentary requirement. The petitioner must submit evidence of its ability to pay in the form of annual reports, federal tax returns, or audited financial statements.

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.