



01

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

JUL 3 2001

File: [Redacted]

Office: Nebraska Service Center

Date:

IN RE: Petitioner:
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: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

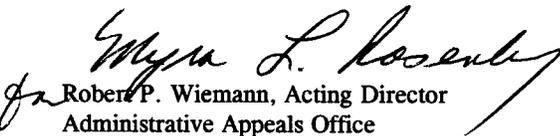
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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, Nebraska 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 an assistant pastor.

The center director denied the petition determining that the petitioner failed to adequately establish that the beneficiary was qualified as a minister of religion or that he had had two years of continuous experience in the proffered position as required.

On appeal, the pastor of the petitioning church argued that the beneficiary is a recognized graduate of a Bible school, that he is pending recognition as a minister by the denomination, and that he has served the church voluntarily since April 1997. The pastor requested reconsideration of the adverse 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 is a church affiliated with the International Church of the Foursquare Gospel denomination headquartered in Los Angeles, California. The petitioning church derives its tax exempt status through its affiliation with that denomination. The petitioner did not indicate the size of its congregation, but stated that it employs a single individual as minister and that it requires an assistant pastor to serve its growing congregation. The beneficiary is a native and citizen of Mexico who was last admitted to the United States on June 8, 1999, as a B-2 visitor with authorization to remain through December 7, 1999. The record indicates that the beneficiary remained beyond his authorized stay and has resided in the United States in an unlawful status since such time.

The first issue to be examined is whether the petitioner has established that the beneficiary is qualified as a minister as defined in these proceedings.

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.

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

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the

minister. The term does not include a lay preacher not authorized to perform such duties.

The petitioner submitted a certificate reflecting that the beneficiary graduated from a three-year course at an Assemblies of God night-school in Bible studies in Juarez, Mexico on May 15, 1993. The pastor of the petitioning church stated that he recognizes the beneficiary as a qualified minister based on the similarities of doctrine between his denomination and the Assemblies of God denomination. It was also stated that the beneficiary's credentials are pending recognition by the governing body of the International Church of the Foursquare Gospel.

On review, 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. There is no evidence to establish that a diploma from the Assemblies of God facility in Juarez is sufficient to qualify an individual as a minister in the International Church of the Foursquare Gospel denomination. It must be concluded that recognition of an alien as a qualified minister by the pastor of an individual church is not sufficient for the purposes of this proceeding. Pursuant to 8 C.F.R. 204.5(m)(2), a minister is defined as an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. Absent confirmation by an authority of the denomination, it cannot be concluded that the petitioner has adequately established that the beneficiary is a qualified minister of religion.

The next issue is whether the petitioner established that the beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

The petition was filed on March 13, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously carrying on the vocation of a minister of religion since at least March 13, 1998.

In the case of alien's seeking special immigrant classification as 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.)

On review of the record, it must be concluded that the petitioner failed to overcome the director's objection. First, as noted above, the petitioner has not established that the beneficiary is qualified as a minister. Nor has the petitioner shown that the



denomination has authorized the beneficiary to perform the duties of a member of the clergy of the denomination.

Second, the petitioner asserted that the beneficiary has served the United States church as a minister since April 1997, without compensation. The petitioner did not explain the beneficiary's means of financial support in the absence of support from the church. It is reasonable to assume that the beneficiary supported himself through some form of secular employment. The record does not establish that the beneficiary was solely engaged in the vocation of a minister in the United States since at least March 1998.

The petition is deficient on additional grounds. The job offer for a special immigrant religious worker must establish that the beneficiary will not engage in supplemental employment. See 8 C.F.R. 204.5(m)(4). The proffered wage in this matter is \$5.00 per hour or \$10,400 per year "plus housing." The petitioner offered no statement and submitted no evidence that the beneficiary would not engage in supplemental employment at this level of compensation. A petitioner must submit its federal tax returns, audited financial statements, or annual reports to establish its ability to pay the proffered wage. 8 C.F.R. 204.5(g)(2). The petitioner has not satisfied this documentary requirement. 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.