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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



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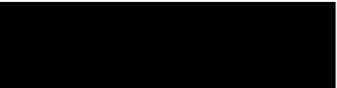
Office: California Service Center

Date:

JUL 16 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)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

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

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California 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 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 be employed as a minister by a church at a salary of \$18,000 per year.

The center director denied the petition determining that the petitioner failed to establish that she had had the requisite two years of continuous experience in the proffered position and the two years of membership in the denomination. The director also found that the petitioner failed to establish that she was qualified as a minister as defined in these proceedings.

A representative of the prospective employer, identified as a pastor of the International Christian Center, Hawthorne, California, filed a timely appeal. The pastor stated, in pertinent part, that the beneficiary has continuously worked as a minister since October 1997, both in Nigeria and the United States. He explained that the petitioner was compensated "in-kind" while serving in Nigeria and with "love offerings" while serving in the United States. The pastor also asserted that ministers in their denomination are appointed, rather than ordained, and that the petitioner was appointed in October 1996 by an affiliated church in Nigeria. The pastor also explained that the Redeemed Christian Church of God is a denomination founded in Nigeria in 1952 and that the petitioner has been a member since 1995.

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 described as a native and citizen of Nigeria who was last admitted to the United States as a B-1/B-2 visitor on September 29, 1998 and has resided in the United States since such time. Her current immigration status is unknown. The prospective employer is described as a new church with a congregation of approximately 100 members. It was incorporated on June 14, 1999 in California and was granted the appropriate tax exempt recognition by the Internal Revenue Service on September 29, 1999.

The first issue to be examined is whether the petitioner has established that she is eligible for classification as a minister under the special immigrant provisions.

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.

In this case, it must be concluded that the petitioner's explanation that ministers are merely appointed to their position is not sufficient for the purposes of this proceeding. The petitioner failed to establish any standards within the church to recognize individuals as ministers who are authorized to perform all the duties of a member of the clergy or show that the beneficiary has satisfied such standards. The record contains no documentation that the beneficiary has received any formal theological training or has satisfied any standards set by an authority of the denomination. Nor does the record contain any license or other documentation establishing that the beneficiary is authorized to perform the functions of a clergy person, such as marriages, by the State of California or any other civil authority.

The record does not sufficiently demonstrate that the beneficiary is a qualified minister authorized to perform the duties of a member of the clergy, rather than a "lay preacher." The certificate submitted by the petitioner is dated November 11, 1996, and indicates it was issued by a church in Nigeria. The certificate states that the petitioner was "appointed a Minister of the Word." It must be concluded that this document is not sufficient to satisfy the petitioner's burden of proof in establishing that she is a qualifying minister of religion. Simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister or pastor. Matter of Rhee, 16 I&N Dec. 607 (BIA 1978).

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

The petition was filed on October 20, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously engaged as a minister of religion since at least October 20, 1997.

Regarding the prior work experience, the petitioner's own claim that she has served as a minister without direct compensation since November 1996 is not sufficient to satisfy the requirement. First, as noted above, the petitioner has not established that she is a qualified minister for the purposes of this proceeding.

Second, as noted by the director, the petitioner has not submitted a detailed credible description or any corroborative evidence of

her general claim of having served continuously as a minister during her period of residence in the United States. For example, the petitioner indicated that she entered the United States in December 1998, but the church at which she claims to have been employed was not established until June 1999. She submitted no corroborative documentation of her alleged employment by one or more churches in the United States, such as her personal tax records. Furthermore, the petitioner failed to submit any evidence to establish her alleged date and manner of entry into the United States, such as her travel documents. 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).

Third, 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. The petitioner made no claim and submitted no evidence that she was solely carrying on the vocation of a minister since at least October 1997. The fact that she was not directly or consistently compensated for her religious functions raises the issue that she was also engaged in supplemental employment as a means of financial support. This would be disqualifying for classification as a special immigrant religious worker.

The next issue is whether the petitioner has established that she has been a member of the prospective employer's denomination for at least the two years preceding filing.

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

Religious denomination means 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. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

The petitioner asserted on appeal that the individual church in Wilmington, California, at which she seeks to be employed, is a member of a denomination of the same name headquartered in Nigeria. She explained that the denomination is headed by a "pastor" and stated that the denomination maintains an internet website which is proof of the denomination's organization.

On review, it must be concluded that the petitioner has not overcome the director's objection. The petitioner submitted no documentation of the denomination's worldwide organization, its organization in the United States, or the procedure by which the new Wilmington church was recognized as a member of the denomination by the ecclesiastical government of the denomination. The petitioner also failed to explain the relationship of the Redeemed Christian Church of God in Wilmington to the International [REDACTED] California which filed the appeal.

In this case, the prospective employer was independently incorporated and recognized by the Internal Revenue Service as an independent religious organization. While the Wilmington church may well be associated with a religious movement based in Nigeria, the petitioner failed to submit sufficient evidence to demonstrate that it qualifies as a religious denomination pursuant to 8 C.F.R. 204.5(m)(2) or that the Wilmington church is a member of any such denomination. Therefore, it must be concluded that the petitioner failed to overcome the director's objection.

A final issue to be reviewed is the church'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 \$18,000 per year. The petitioner failed to submit proof that the prospective employer has the financial ability to pay this salary. The petitioner must submit evidence of its ability to pay in the form of annual reports, federal tax returns, or audited financial statements. For this reason as well, the petition may not be approved.

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.