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

[redacted] Public Copy

File: EAC-00-072-51274 Office: Vermont Service Center Date: JUL 16 2001

IN RE: Petitioner: [redacted]
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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER: [redacted]

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

Myra L. Rosenberg
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and 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), in order to employ him as a "Sunday school teacher and counselor" at an annual salary of $21,000.

The director denied the petition finding that the petitioner failed to establish that the beneficiary would be employed in a qualifying religious occupation, that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition, and that the church had the ability to pay the proffered wage.

On appeal, the petitioner asserted that it has employed the beneficiary as a religious worker at the proposed salary. The petitioner also furnished copies of the church's monthly bank statements.

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 an independent church. The size of its congregation was not indicated. It has been recognized with the appropriate tax exempt status since March 29, 1994. The beneficiary is a native and citizen of Nigeria who was last admitted to the United States on October 26, 1993 in P-1 classification as a performing artist. The record reflects that the beneficiary remained beyond his authorized stay and has resided in the United States since such time in an unlawful status.

The first issue in this proceeding is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

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.
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> * * *
>
> (D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

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

> *Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.
>
> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in

> religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

With the petition, a representative of the church stated that the beneficiary joined their church in 1993 and that [redacted] has been working on full time basis as Counselor and Sunday school teacher."

In its statement on appeal, a different representative stated "It is incorrect to state that the beneficiary duties seem to be as a Sunday School Teacher." The affiant testified that the beneficiary was ordained as a minister in 1990 in Nigeria, leads the congregation in worship services, and the church has employed him at a salary of $21,000 for an unstated period of time.

On review, the petitioner has advanced inconsistent claims regarding the beneficiary's alleged employment by the church. Clearly, there is a significant difference between the duties of a Sunday school teacher and an ordained minister. The requirements for classification as a lay religious worker are different from

those for a minister of religion. 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). Furthermore, a material change to the terms of a petition cannot be made on appeal. See Matter of Katigbak, 14 I&N Dec. 45 (Comm. 1971).

Based on the petitioner's inconsistent descriptions of the proposed employment, it must be concluded that the petitioner has failed to overcome the director's objections. The petitioner failed to establish that the beneficiary would be employed in a qualifying religious vocation or occupation.

The next issue is whether the petitioner has established that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

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 January 3, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least January 3, 1998.

On review, it must be concluded that the petitioner has failed to satisfy its burden of proof. First, the petitioner failed to state the date the beneficiary allegedly commenced employment with the church. Therefore, the petitioner failed to claim and failed to establish that it had employed the beneficiary since at least January 1998.

Second, the petitioner furnished no objective proof of its claim of having employed the beneficiary, such as tax records. Merely 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, the petitioner was admitted to the United States at least three times during 1993 in P-1 classification with authorization for employment by Interscope Records. The beneficiary's passport also indicates his occupation as "artist." While the petitioner claims that the beneficiary has a history of some form of religious employment since 1990, this claim is not consistent with the objective evidence of record.

Fourth, the petitioner has submitted no evidence of the beneficiary's occupation or employment since his admission to the United States such as his tax records. Absent a detailed description of the beneficiary's employment history, supported by credible evidence, the Service is unable to determine that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

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 $21,000 per year. The petitioner submitted copies of its monthly bank 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 the wage in the form of annual reports, federal tax returns, or audited financial statements. The petitioner has not satisfied this burden.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.