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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



Public Copy

JUL 24 2001

File: [Redacted]

Office: Vermont Service Center

Date:

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), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

Identifying data used 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

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be dismissed.

The petitioner is the United States denominational headquarters of the Unification 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 be employed as a "church worker."

The director denied the petition determining that the petitioner had failed to establish that the beneficiary had had the required continuous work experience in a qualifying religious vocation during the two-year period immediately preceding the filing date of the petition.

The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), dismissed the appeal determining, in pertinent part, that the petitioner had failed to overcome the grounds for denial or to establish that the past and proposed position of church worker constituted a religious vocation within the meaning of the special immigrant provisions.

On motion, counsel for the petitioner argued that in 1982 a federal district court reversed the Service's denial of a petition for a church worker under the former "sixth preference" provision at 8 U.S.C. 1153(a)(6) and that in 1995 the AAO sustained appeals where petitions had been denied under similar circumstances. Counsel further stated that a pamphlet titled, "Word and Deed," is submitted to provide a "comprehensive explanation of the full time activities undertaken by Unificationists involved in the vocation of religion."

On review, it is determined that the petitioner has failed to meet its burden of proof in establishing that the beneficiary had been or would be engaged in a qualifying religious vocation. According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. In order to prevail on a motion to reopen, the petitioner must establish that the new facts and/or evidence presented are material and were unavailable at the time the prior decision was issued. Id. According to 8 C.F.R. 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. 103.5(a)(4) further states that a motion that does not meet applicable requirements shall be dismissed.



The petitioner has stated no new facts to be considered and has not established that any such facts are material and were unavailable at the time of appeal. Nor has the petitioner established that the prior decision was an incorrect application of law based on precedent. The prior federal court decision cited by counsel concerned a petition filed under a separate visa provision of the Act and is not directly relevant. The prior unpublished administrative decisions of the AAO cited by counsel carry no precedential value. See 8 C.F.R. 103.3(c).

Accordingly, the petitioner has failed to establish that its motion meets the applicable requirements of a motion to reopen or reconsider and must be dismissed. In its discretion, however, the Service will reopen the matter *sua sponte* on its own motion and consider the merits of the petitioner's argument.

The appellate decision set forth in detail the basis for finding that the petitioner had failed to establish that the beneficiary had been or would be serving as a lay worker in a religious vocation. In summary:

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

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.

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.

In the decision it was noted that the beneficiary was admitted to the United States on July 24, 1995 under the visa waiver program as a visitor for pleasure with authorization to remain for 90 days. The beneficiary remained beyond his authorized stay and was stated to have commenced being a "full time church worker" on October 1, 1995. He has remained in the United States since such time in an unlawful status.

In the record of proceeding, the petitioner described the nature of one of its church workers as living communally in a church-



sponsored facility whose duties are individual devotions and neighborhood canvassing. It was stated that church workers receive no compensation, but are supported by the church.

The appeal was dismissed finding, in pertinent part, that the petitioner failed to show that its church workers were engaged in a religious vocation because they were not a defined religious order with a life-long calling to religious life evidenced by the taking of vows as required by 8 C.F.R. 204.5(m)(2) and had not satisfied the requirements of the regulation by some commensurate means.

The petitioning organization in this matter claims a U.S. membership of some 30,000, with 650 "core members." While not specified by the petitioner, these core members are apparently the same as the "full time church workers" for which the petitioner seeks classification of the beneficiary. A 29-page pamphlet, "Word and Deed," does not specifically define the position of church worker as alleged by counsel. The pamphlet does state; "...the church does not formally ordain ministers. But it does designate 'state directors' or 'center directors' who are responsible for managing external church affairs as well as counseling and spiritually guiding church members." The pamphlet goes on to state:

In most Christian denominations there are two basic forms of evangelical outreach. One form is the "direct witness" which is sometimes conducted door to door with Bibles and/or literature or with tables set up on street corners...

* * *

The other form of evangelical outreach is investment over a period of time. In this way a person who has a strong denominational belief shares it with a friend whose relationship he or she has developed. As a natural outgrowth of their friendship, they often share the inspiration of their faith with them.

* * *

Home Church is the title given to the public service and community outreach programs of individual members of the Unification Church. Through care and education, the member takes responsibility for the physical and spiritual well-being of every person living in an area of 360 homes. In other words, the fundamental purpose of each member of the Unification Church is to serve, love educate and uplift the inhabitants of 360 households.



On review, the petitioner does not specifically and consistently distinguish between its members, core members, its two forms of evangelical outreach workers, and the Home Church group. The beneficiary in this matter appears to fall in the latter category in that he "canvasses" a 360-home area. The argument that these duties constitute a qualifying religious vocation under the special immigrant religious worker provisions at 8 C.F.R. 204.5(m) is not persuasive.

First, as noted in the prior decision, there is no indication that the members of the Home Church group [church workers] take any form of religious vow. The petitioner stated that even its ministerial class does not take formal vows or enter a religious life as contemplated by the regulations.

Second, as noted in the prior decision, the petitioner gives no indication of the time period during which its members are engaged in the work of a Home Church group. The petitioner claims that the beneficiary in this matter has been involved as a church worker since 1995. The petitioner submitted no independent proof of this claim, such as tax records, which would normally be expected in an employment-based visa petition for lay religious workers. The Service has no means to determine whether the beneficiary will continue to serve in this capacity on a temporary basis or as a life-long calling as is normally associated with religious vocations. The Service cannot grant special immigrant classification in a case where the position is temporary or where the beneficiary intends to engage in secular employment once the benefit is granted or in the foreseeable future.

Third, as noted in the prior decision, the petitioner has failed to disclose whether the beneficiary's duties involve solicitations or any form of fundraising. 8 C.F.R. 204.5(m)(2) specifically prohibits special immigrant lay workers from the solicitation of funds or donations.

Fourth, as noted in the prior decision, the petitioner has furnished no proof of its claim of the beneficiary's past and proposed religious activities on behalf of the church. The petitioner has not identified the location(s) at which the beneficiary has worked or will work, has not given any description of the type of facility at which the beneficiary has and will "live communally" with other church workers, has not stated how many such centers it operates, has not stated how long the workers engage in such activity, and has not stated how the church supports and administers these centers. Such evidence is normally provided in a petition for a monk, nun, or religious brother engaged in a qualifying religious vocation.

For all these reasons, it is concluded that the petitioner has failed to overcome the merits of the prior decision by establishing



that the beneficiary had been or would be engaged in a qualifying religious vocation.

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 motion is dismissed.