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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



ic Copy

File: EAC-99-177-52148 Office: VERMONT SERVICE CENTER

Date: JUN 18 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 APPLICANT:



identification 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 described as a Hindu temple. 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 musician.

The director denied the petition determining that the beneficiary's claimed experience as a volunteer musician at the temple did not satisfy the requirement of having had at least two years of experience continuously engaged in a religious occupation.

On appeal, counsel for the petitioner submitted a letter from the president of the temple asserting that the beneficiary has been active in religious and community services for over twenty years and has done volunteer work with local temple activities since 1996.

Section 203(b)(4) of the Act provides classification as a special immigrant religious worker to a qualified alien 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 described as a Hindu temple and cultural organization with 42 active members. The beneficiary is a native and citizen of Trinidad who was last admitted to the United States on May 30, 1990, as a B-2 visitor with an authorized stay of six months. 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.

At issue in the director's decision is whether the beneficiary's past activities as a volunteer musician at the temple satisfied the requirement of having had two years of experience in a religious occupation.

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.

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 May 20, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious occupation for at least the two years from May 20, 1997 through the date of filing.

The statute requires that the alien have been "carrying on such vocation, professional work, or other work continuously" for the two years prior to filing. See Section 101(a) (27) (C) (iii) of the Act. The regulations are silent on the question of part-time or volunteer work satisfying the requirement. This is in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a

conventional work schedule. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The regulation defines religious occupations, in contrast, in general terms as an activity related to a traditional religious function. Id. The regulations therefore recognize a distinction between someone practicing a life-long religious calling and a lay employee engaged in an occupation.

In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show the terms of remuneration and clearly show that the alien will not be dependent on supplemental employment. See 8 C.F.R. 204.5(m)(4). This is consistent with the plain meaning of the term "occupation" which is an activity engaged in as one's primary activity and means of support. The Service therefore holds that a position underlying a petition for special immigrant classification, in the case of lay workers engaged in an occupation, must be full-time paid employment consistent with other employment-based petitions. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets the regulations to require that the prior experience have been full-time salaried employment as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in an occupation.

In this case, it is claimed that the beneficiary performed voluntary services as a "religious musician" with the petitioner since 1996. The director denied the petitioner finding that this claim did not constitute the requisite two years of continuous experience in a religious occupation. The petitioner did not dispute the director's analysis on appeal, but merely reiterated its claim.

On review, it must be concluded that the petitioner failed to overcome the director's objection. Casual voluntary services with one's religious organization does not constitute continuous work experience in an occupation within the meaning of section 203(b)(4) of the Act. The record in this matter does not contain any indication of the beneficiary's actual occupation, or means of financial support, in the United States. Therefore, the record is insufficient to establish that the beneficiary had been engaged in any particular occupation, religious or otherwise, for the two-year period.

Beyond the discussion in the director's decision, the petitioner has failed to demonstrate eligibility on other grounds. The

petitioner has failed to establish that it is a qualifying organization exempt from, or eligible for exemption from, taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations pursuant to 8 C.F.R. 204.5(m)(3)(i); that it has the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2); that the proposed position constitutes a qualifying religious occupation pursuant to 8 C.F.R. 204.5(m)(2); that the petitioner has tendered a qualifying job offer pursuant to 8 C.F.R. 204.5(m)(4); or that the beneficiary is qualified to perform a religious occupation pursuant to 8 C.F.R. 204.5(m)(3)(ii)(D). 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, that burden has not been met.

ORDER: The appeal is dismissed.