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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

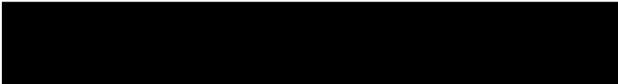


File: WAC-99-056-50660

Office: California Service Center

Date: MAY 2 2001

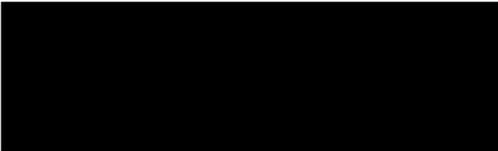
IN RE: Petitioner:
Beneficiary:



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)

Public Copy

IN BEHALF OF PETITIONER:



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, California 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 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 her as a pastoral assistant. The director denied the petition finding that the beneficiary's volunteer work at the church did not satisfy the requirement that she have had at least two years of continuous work experience in a religious occupation during the period immediately preceding the filing date of the petition. The director also found that the petitioner failed to establish its ability to pay the proffered wage.

On appeal, counsel for the petitioner argued that the director cited no authority for disallowing volunteerism from satisfying the prior work experience requirement and further argued that the petitioner adequately established its ability to pay the proffered wage.

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 claiming a congregation of approximately 100 members. The beneficiary is a native and citizen of Korea currently residing in the United States in F-1 classification as a student.

At issue in this proceeding is whether the petitioner has established that the two-year work experience requirement has been satisfied.

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 December 17, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in the proffered position since at least December 17, 1996.

In two letters submitted in support of the petition, the pastor of the church testified that the beneficiary has been a member of the church since February 1996 and had been a church volunteer serving some 30 to 40 hours a week since April 1996.

Counsel's argument that the director improperly articulated a new rule is not persuasive. In the decision, the director held that a simple claim of having been a lay church member and volunteer over a two-year period, while also being a full-time student, did not establish that the alien had been continuously carrying on a lay religious occupation as required for special immigrant classification. The director noted that 8 C.F.R. 204.5(m) (4)

requires that a lay person in a religious occupation, as opposed to an ordained person engaged in a religious vocation, must be paid for their services so that they will not be dependent on supplemental secular employment. This reasoned interpretation of the existing regulations does not constitute a new rule and is consistent with the statute and the implementing regulations.

Many persons perform extensive volunteer work with religious institutions as an expression of their faith. They also carry on secular occupations to financially support themselves. They are not considered to be engaging in a religious occupation by virtue of the religious activities. In this case, the beneficiary was apparently engaged in the occupation of a full-time student. Any voluntary services donated to her church does not constitute having engaged in a religious occupation. Furthermore, the claim that the alien volunteered an average of approximately "30 - 40 hours per week" over a two-year period is insufficient to clearly establish that the alien was continuously engaged in full-time service over that period as is required for special immigrant classification. For these reasons, it must be concluded that the petitioner has failed to overcome the director's objection.

It is noteworthy that there is no bar to the petitioner applying for nonimmigrant classification of the beneficiary under section 101(a)(15)(R) of the Act, which does not require prior experience, and employing her for the requisite two years and then applying for special immigrant classification.

The remaining issue is the prospective employer'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 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 annual reports, federal tax returns, or audited financial statements.

The petitioner stated that the offered wage in this matter is \$1,200 per month, or \$14,400 per year. The director found that three bank statements from the petitioner's checking account was insufficient to satisfy the requirement. It is concluded that counsel has failed to overcome the director's objection. The regulations pertaining to this issue are explicit. The petitioner must submit evidence of its ability to pay in the form of annual

reports, federal tax returns, or audited financial statements. The petitioner has not satisfied this documentary requirement. Moreover, it is not clear how a church with only 100 members could demonstrate sufficient revenues on its tax return etc. to support a full-time pastor, a full-time pastoral assistant, and its overhead expenses such as building and maintenance.

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.