

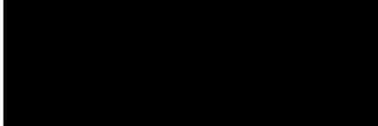


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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-99-185-52239

Office: Vermont Service Center

Date: MAY 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

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.

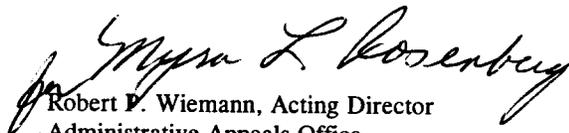
If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent 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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 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 prison Chaplain.

The center director denied the petition determining that the petitioner had failed to establish that he had had the required continuous work experience as a minister during the two-year period immediately preceding the filing date of the petition. The director noted that the petitioner had been a full-time student during the two-year qualifying period.

On appeal, the petitioner explained that he worked part-time as a prison Chaplain while going to school during the two-year period and stated that he believes he qualifies for the classification sought.

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).

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; or

The petitioner is a native of Italy and a citizen of Canada. He holds a Bachelor's degree in theology and is pursuing an advanced degree in divinity. The record reflects that he was ordained as a minister by the Italian Pentecostal Church of Canada on September 5, 1998, and that he was admitted to the United States on September 9, 1998, in R-1 classification as a religious worker.

At issue in the director's decision is whether the petitioner established that he had been continuously working in a qualifying religious vocation for at least the two years preceding the filing of the petition.

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 June 1, 1999. Therefore, the petitioner must establish that he was continuously carrying on the vocation of a minister since at least June 1, 1997.

Apart from the director's analysis, as the beneficiary was ordained on September 5, 1998, he could not have been carrying on the

vocation of a minister since June 1, 1997. For this reason, the petition may not be approved.

The petitioner must also establish that the prospective employer is a qualifying tax-exempt religious organization as defined in these proceedings.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

The record reflects that the petitioner seeks to be employed as a prison Chaplain at the Monroe Correctional Facility, Monroe County, Pennsylvania. In a letter dated February 14, 2000, it was explained that the petitioner would be sponsored by the Christian Church of North America, which would provide a stipend, but that his salary would be paid by the Monroe County Commissioners Office. A county governmental body cannot be a qualified tax-exempt religious organization. Therefore, employment by such a body, even if to perform ministerial functions, is ineligible for special immigrant classification. For this reason as well, the petition may not be approved.

It is noteworthy that even if the petitioner were to be employed by the Christian Church of North America, he has not established the requisite two years membership in that denomination or its ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2).

The petitioner must also demonstrate a qualifying job offer.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely

dependent on supplemental employment or the solicitation of funds for support.

Special immigrant classification is contemplated for permanent employment. The job-offer letter from the Christian Church of North America states that the employment is proposed for three to five years. Temporary employment is not a qualifying basis for an employment-based immigrant visa petition. 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.