



21

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

File: EAC-99-025-52447

Office: Vermont Service Center

Date: MAY 22 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:



Identifying data should be
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

Myra L. Rosen
for 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 a religious organization that seeks classification of the beneficiary 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 employ him as a monk in the United States.

The center director denied the petition determining that the petitioner had submitted conflicting information regarding the beneficiary's training and experience. The director concluded that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a monk for at least the two years preceding the filing of the petition or that he would be engaged in that vocation in the United States. The director also noted that the petitioner failed to demonstrate its financial ability to support the beneficiary.

On appeal, counsel for the petitioner submitted a written brief arguing that the Service erred in concluding that the requirements necessary for classification had not been satisfied.

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 first issue is whether the beneficiary has satisfied the prior work experience requirement.

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.

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 October 23, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation since at least October 23, 1996.

The beneficiary is described as a displaced ethnic Tibetan born in India on May 15, 1973. The petitioner provided statements explaining that the beneficiary entered a Tibetan monastery in India in 1976, was ordained as a monk at the age of five, and has been affiliated with the monastery since such time. The record shows that the beneficiary was admitted to the United States as a B-2 visitor on June 7, 1994. Counsel asserted on appeal that the beneficiary was granted a change of classification to R-1 religious worker in December 1994 and has been employed by three religious organizations in the States since such time. The petitioner specified that it seeks classification of the beneficiary as a minister of religion.

The statute provides for three distinct classifications of religious workers: ministers of religion, professional workers, and nonprofessional workers. Each has different eligibility requirements. The regulations also distinguish between individuals who are ordained, have taken vows, and are engaged in a religious vocation from lay persons performing a religious occupation. These broad classifications are intended to accommodate the traditions of all religious organizations.

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

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

There are several deficiencies in the instant petition. First, the Service is unable to accept the claim that the beneficiary was ordained as a minister, and thereby authorized to perform all the functions of a member of the clergy, at the age of five. He may have been accepted as a student or novitiate at the monastery at that age, but he was not authorized to perform all the duties of a full member of the clergy at that age as required by the regulatory definition of a minister at 8 C.F.R. 204.5(m)(2). In this case, the petitioner has not adequately explained the requirements for recognition as a member of the clergy, that is a minister, in its denomination or when the beneficiary was recognized as becoming a member of the clergy. Therefore, it cannot be concluded that the beneficiary has been continuously carrying on the vocation of a minister of the denomination since at least October 1996.

Second, on appeal counsel claimed that the beneficiary has been engaged in authorized religious work in the United States since 1994. However, no corroborating evidence was submitted such as tax records and employment verification letters. Nor has the nature of the religious work been explained. 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, in the case of special immigrant ministers, it was held in Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986) that the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion. In this case, the petitioner submitted a letter stating that the beneficiary intends to supplement his support from the petitioning organization by engaging in part-time

secular work in the field of housekeeping. Since the beneficiary does not intend to be engaged solely in the religious vocation, he cannot qualify as a special immigrant minister.

Another issue is whether the petitioner is a qualifying organization for the purposes of this proceeding.

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 petitioner submitted a letter from the Internal Revenue Service ("IRS") reflecting that the Tibetan Buddhist Cultural Society of Newtonville, Massachusetts was recognized as a qualifying tax-exempt religious organization. The IRS notice was not a grant of group tax exemption. The record does not adequately establish that the petitioner, located in Sommerville, is recognized as a qualifying religious organization.

The director also be noted that the petitioner failed to establish 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 submitted an exemplar bank account monthly statement as proof of its financial resources. This does not satisfy the regulatory standard. The petitioner did not submit evidence of its ability to pay the wage in the form of annual reports, federal tax returns, or audited financial statements. Therefore, the required financial ability has not been established.

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.