U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted] Public Copy

File: EAC-98-194-52940 Office: Vermont Service Center Date: MAY 22 2001

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

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

Myra L Rose

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. An untimely appeal was treated as a motion to reopen and the center director affirmed the prior decision. The matter is now before the Associate Commissioner on appeal. The appeal will be dismissed.

The petitioner is a church that 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 minister.

The center director denied the petition finding that the petitioner's claims regarding the amount of the beneficiary's stated duties related to religious education, in order to consider the position full time, was not credible given the small size of the congregation. The director also found that the petitioner failed to demonstrate the ability to pay the proffered annual salary of $7,200. The director denied the petition in a decision dated June 18, 1999.

The petitioner filed an untimely appeal from the decision. Pursuant to 8 C.F.R. 103.3(a)(2), the director treated the appeal as a motion and affirmed the prior decision.

The petitioner is described as a new church incorporated in 1992. The record reflects that it claims 140 members and that it holds services in three rented locations. The internal financial statements provided by the petitioner reflect a annual budget of approximately $106,000, which includes approximately $26,000 as "compensation to officers" at the three locations.

The director found that the description of the proposed duties, specifically regarding a claim of 36 hours per week in religious education and an additional 19.5 hours in outreach work to lack credibility. The director also found that based on the petitioner's own submissions regarding its financial resources, it did not establish the ability to pay the proffered wage.

On appeal, counsel for the petitioner asserted that outreach hours would actually only be 15 to 18 hours per week and that the church will not actually pay a salary but will provide for room and board.

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.

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.

The director appears to have addressed the petition as a request for classification as a lay worker in a religious occupation, rather than as a minister. There are separate regulatory criteria for the three classifications of religious worker.

The director rested his decision on the description of the proposed duties of the beneficiary. A review of the record reveals a number of deficiencies. Clearly, the petitioner, as an independent church group, has not submitted sufficient evidence to warrant favorable action on the petition. While the hours of a work schedule are not normally material to a petition for classification as a minister, credibility is certainly material.

The petitioner's assertions regarding the facts concerning the position offered to the beneficiary, the duties of that position, and the church's financial status were not supported by any objective supporting documentation. There is no indication that the church has ever had an actual full-time employee in its past and no evidence that it is actually a functioning religious organization holding services for a regular congregation. Similarly, the petitioner presented no plan to explain how it will utilize the beneficiary and her spouse in ministering to its three separate claimed congregations. Furthermore, there is no corroboration of the petitioner's claim of its annual financial revenues. The petitioner entirely bears the burden in these proceedings. 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).

Furthermore, the petitioner has contradicted its claims made on the petition regarding its manner of compensating the beneficiary. The petitioner now claims it will need only $40 to $50 per month in order to support the beneficiary. This represents a significant material change in the terms of remuneration from the $7,200 represented on the original petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). Furthermore, a material change to the terms of a petition cannot be made on appeal. See Matter of Katigbak, 14 I&N Dec. 45 (Comm. 1971). For these reasons, the director's decision that the beneficiary had not demonstrated that he had the requisite two years of experience in a qualifying religious occupation or that the proposed position constituted a qualifying religious occupation will not be disturbed.

An issue not raised by the director is whether the beneficiary could possibly satisfy the prior experience requirement as a minister. In order to establish eligibility for classification as a special immigrant minister, the petitioner must demonstrate that the alien beneficiary has been solely employed as a minister for the two years immediately preceding filing and that he or she seeks to enter the United States solely to pursue a religious vocation. See Matter of Faith Assembly Church, 19 I&N Dec. 391 (Comm. 1986). In this case, it is claimed that the beneficiary was ordained in October 1996 and thereby authorized to perform the duties of a minster. The petition was filed in June 1998. In order to have the requisite two years of experience as a minister, the beneficiary would have had to be ordained prior to June 1996. Accordingly, the beneficiary could not have had two years of experience as an ordained minister as of the date the petition was filed. 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, that burden has not been met.

ORDER: The appeal is dismissed.