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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



Public Copy

File: [Redacted]

Office: Nebraska Service Center

Date: MAY 22 2001

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

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, Nebraska 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 by a United States church.

The center director denied the petition determining that the petitioner had failed to establish that the prospective employer was a qualifying religious organization for the purposes of this proceeding, that the petitioner had had two years of continuous experience in the proffered position as required, or that the petitioner had at least two years of membership in the prospective employer's denomination as required.

An official of the church filed a timely appeal and submitted a written statement from a member of the board of the church and other additional documents.

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 church in question 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 stated that the Church of Our Savior does not have tax exempt recognition from the Internal Revenue Service ("IRS"). The director advised the petitioner that the documentation required by the IRS to establish eligibility for exemption under section 501(c) (3) includes: a completed Form 1023, a completed Schedule A attachment, and a copy of the corporate organizing instrument with a qualifying dissolution clause.

The petitioner submitted a copy of the Form 1023 and Schedule A, but stated that the church by-laws do not have a dissolution clause and that they have no time to amend the by-laws.

The petitioner's explanation of the lack of the required documentation is noted. However, the regulations require specific documentation and the petition may not be approved without such documentation. Therefore, the petitioner has failed to overcome this ground for denial of the petition.

The next issues are the petitioner's two years of work experience and two years of membership in the denomination of the prospective employer.

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 prospective employer is described as a church established in the 1950s with a congregation of approximately 100 families that primarily serves a population of Polish origin. The petitioner/beneficiary is described as a native and citizen of Poland and an ordained minister. The petitioner declared that he last entered the United States on October 1, 1999, as a visitor for pleasure.

The petition was filed on November 23, 1999. Therefore, the petitioner must establish that he has the requisite work experience and denominational membership since at least November 23, 1997.

Regarding the work experience, the petitioner submitted documentation indicating that he was ordained in the Pentecostal Church of Poland on July 11, 1982 and documentation that he has been engaged as a minister since such time.

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.

The petitioner made no claim and submitted no evidence that he has been engaged "solely" as a minister of religion since at least November 23, 1997. Therefore, the petitioner has failed to overcome this ground for denial of the petition.

Regarding the denominational membership, the pertinent regulation is 8 C.F.R. 204.5(m)(2) which states, in pertinent part, that:

*Religious denomination* means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this

definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

The prospective employer was described as an autonomous congregation affiliated with the North American Baptist Conference of Churches. There is no evidence of a formal affiliation with the Pentecostal Church of Poland. While it was explained on appeal that the prospective employer attracts members from many denominations after they immigrate to the United States, that is not sufficient to satisfy the regulatory requirement. Therefore, the petitioner has failed to overcome this ground for denial.

It must be noted that the petitioner also 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 did not submit evidence of the church's financial status in the form of annual reports, federal tax returns, or audited financial statements. Therefore, the required financial ability to pay the wage offered 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.