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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



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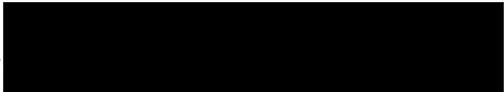
Office: Vermont Service Center

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:



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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, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The matter will be remanded.

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 director denied the petition finding that the petitioner had not established that the beneficiary had been continuously carrying on the vocation of a minister for the two years immediately preceding filing of the petition. The director's concern arose from insufficient documentation of the beneficiary's activities during his stay in the United States at the time the petition was filed.

On appeal, counsel for the petitioning church argues that the director misread the certificate of the alien's foreign employment as a minister. Counsel explains that the beneficiary has been continuously employed as a minister by an affiliated church in Korea since 1995 and that he has never been employed in the United States.

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).

At issue is whether the petitioner established that the beneficiary had had the requisite two years of continuous work experience in the proffered position.

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 February 14, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the vocation of a minister of religion since at least February 14, 1998.

The beneficiary is a native and citizen of Korea. The petitioner submitted evidence that the beneficiary was ordained as a minister in 1995 and has been continuously employed by a church in Korea since such time. The petitioner indicated on the petition form that the beneficiary was admitted into the United States as a nonimmigrant visitor on December 24, 1999. In his decision, the director expressed concern that the beneficiary was not continuously engaged in a qualifying religious occupation during the period from the date of admission into the United States through the date the petition was filed. The director noted that any voluntary participation in church activities in the United States would not constitute engagement in a religious occupation.

On review, it is concluded that the director erroneously applied the standard for a lay person in a religious occupation in raising the issue of voluntary lay participation in church activities not qualifying as engagement in a religious occupation. The two-year work experience standards for ministers are different from those of lay workers.

The petitioner must establish that the beneficiary is a qualified minister of the denomination and that he has been continuously carrying on that vocation for at least two years. In the case of special immigrant ministers, it has been held that the alien must have solely engaged in the vocation for the two-year period and must intend to be solely engaged as a minister of the religious denomination in the United States. Matter of Faith Assembly Church, 19 I&N Dec. 391 (Comm. 1986). In the case of ministers, a brief

vacation or business trip abroad would not be considered interruptive of the vocation of a minister of religion. cf. Matter of Z-, 5 I&N Dec. 700 (Comm. 1954).

The record will be remanded to allow the director to determine the duration of the beneficiary's stay(s) in the United States and to determine if the beneficiary has been continuously carrying on the vocation of a minister.

It is further noted that the record does not contain the requisite certification of tax exempt recognition of the petitioning church from the Internal Revenue Service. The petitioner must establish that it is a qualifying organization exempt from, or eligible for exemption from, taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. 8 C.F.R. 204.5(m)(3)(i).

The record of proceeding will be remanded to the center director for reconsideration and issuance of a new decision consistent with the above.

ORDER: The decision dated October 19, 2000, is withdrawn.
The case is remanded.