

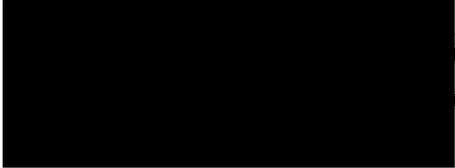


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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: EAC-99-043-51693

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, 8 U.S.C. 1153(b)(4)

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

IN BEHALF OF PETITIONER: Self-represented

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 her as a "youth and Christian education director."

The director denied the petition stating that the petitioner submitted conflicting evidence that the beneficiary had been employed full-time and had been a full-time graduate student during the period for which the two years of qualifying work experience was required.

On appeal, the pastor of the petitioning church asserted that the documentation is not conflicting. The pastor stated that the beneficiary was employed full-time while attending a graduate program at night.

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 petitioner is a parish of the Church of God denomination claiming a congregation of 114 members. The beneficiary is a native and citizen of Jamaica residing in that country. It was stated that the beneficiary had a long record of theological education, experience, and service. In a letter accompanying the petition, it was stated that the church seeks the beneficiary's services in the newly created full-time position for which she will be remunerated at a rate of \$300 per week, or \$15,600 per year, plus housing.

The issue raised by the director is whether the petitioner established that the beneficiary had had the requisite two years of continuous work experience in a qualifying religious occupation.

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 November 20, 1998. Therefore, the petitioner must establish that the beneficiary was continuously engaged in a qualifying religious occupation since at least November 20, 1996.

On review, the record contains a letter dated June 25, 1999, from Rev. O.O. Baker of the Bethel Bible College, Kingston, Jamaica. Rev. Baker testified that the beneficiary was employed as a part-time lecturer from September 1991 to August 1996 and as a full-time staff member since September 1996.

The petitioner's explanation of the discrepancy in the documentation on which the director's decision rested is found to be both plausible and reasonable. The letter attesting to the beneficiary's work experience may be considered credible and having served as a lay lecturer/instructor in a Bible college may be considered qualifying work experience in a religious occupation. Therefore, the petitioner has overcome the grounds for denial set forth in the director's decision. However, the petition may not be approved.

In order for a petition for special immigrant classification to be approved, a petitioner must satisfy all the pertinent eligibility requirements.

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 also 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 religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

A review of the record reveals that in response to a request from the director, the petitioner submitted a letter dated July 15, 1999, in which it was stated that the beneficiary "will be paid a weekly salary of \$200.00 in addition to free room and board." The \$200 weekly salary offer is equivalent \$10,400. This contradicts the offer of \$15,600 submitted with the petition.

First, the petitioner must clearly state the terms of remuneration as required by 8 C.F.R. 204.5(m)(4).

Second, it is incumbent on the petitioner to elaborate on the meaning of "housing" or "room and board" when it is part of the terms of remuneration underlying an immigrant visa petition.

Third, the petitioner must explain and establish that the beneficiary will not be dependent on supplemental secular employment. Classification under section 203(b)(4) of the Act is provided for in order to work for a religious organization in a religious vocation or occupation. It is not provided for aliens intending to engage in supplemental secular employment.

Fourth, the petitioner must establish its ability to pay the proffered wage. In order to establish the petitioner's ability to pay the proffered wage, 8 C.F.R. 204.5(g)(2) requires that evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements. In this case, the petitioner submitted an opinion of its accountant, copies of mortgage documents, various bank statements, and a series of

cancelled checks. These documents do not satisfy the requirement stated above. The petitioner must submit its annual reports, federal tax returns, or audited financial statements.

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

**ORDER:** The decision dated August 26, 1999 is withdrawn.  
The case is remanded.