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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-99-249-54052 Office: Vermont Service Center Date: 18 SEP 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

*Myra L. Rosenbly*  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It 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 an associate pastor at an annual salary of \$18,000.

The director denied the petition finding that the petitioner failed to submit sufficient information to establish that the beneficiary had been or would be engaged in a qualifying religious vocation or occupation and that it failed to demonstrate its ability to pay the proffered wage.

On appeal, the pastor of the petitioning church submitted a letter stating that they will submit a letter demonstrating that the beneficiary has the required two years of experience and that the beneficiary will be employed as a pastor. The pastor also furnished a financial statement and copies of the church's bank statements. In a subsequent submission, the pastor furnished a copy of the beneficiary's transcripts from National Bible College in Ft. Washington, Maryland.

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 in this matter is described as a church affiliated with the Baptist General Association of Virginia and receives the appropriate tax exempt recognition as a member church. The beneficiary is described as a native and citizen of Ghana who was last admitted to the United States on September 20, 1997, in M-1 classification as a vocational student. His current immigration status is unknown.

The record will be reviewed *de novo*. The statute provides for three distinct classifications of religious workers: ministers of religion, professional workers, and nonprofessional workers. Each has different eligibility requirements. In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy each of several eligibility requirements.

A petitioner must establish that the beneficiary is qualified as a minister as defined in these proceedings.

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.

In the undated job-offer letter, the pastor of the petitioning church stated, "Pastor Emmanuel Sarfo will be fully ordained upon completion of his courses to enable him perform [sic] these ordinances."

Accordingly, based on the petitioner's own testimony, the beneficiary is not yet an ordained minister of the denomination. It is noted that the petitioner submitted a 1995 "certificate of ordination" issued by a church in Ghana. This document is insufficient to establish that the beneficiary is recognized as a minister in the Baptist denomination in the United States. See Matter of Rhee, 16 I&N Dec. 607 (BIA 1978).

In addition, the petitioner has not explained the standards required to be recognized as a minister in its denomination or shown that the beneficiary has satisfied such standards. The petitioner also did not submit a letter from an authorized official of the denomination verifying the denomination's recognition of the beneficiary's credentials as a minister or its recognition of his eligibility to be ordained upon completion of studies. A single statement from an official of the individual petitioning church, absent corroborating evidence, cannot be accorded the necessary evidentiary weight to satisfy this requirement. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

It is noted that any voluntary services performed for the petitioning church during the course of his theological studies does not establish that he was a minister or that he was performing the duties of a minister. As noted in the regulation, a "lay preacher" is not considered a minister for the purposes of this visa proceeding.

For this reason, the petition may not be approved.

A petitioner must also establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

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.

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.

The petition was filed on August 22, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least August 22, 1997.

In this case, the beneficiary had not yet been ordained as of the filing date of the petition. Therefore, he could not have accrued any experience as a minister during the two-year qualifying period.

For this reason as well, the petition may not be approved.

A petitioner must also demonstrate its 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 internal financial summary and bank statements as proof of the church's financial resources. These documents do not satisfy the regulatory requirement. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not established the ability to pay the proffered wage. It is also noted that the petitioner has not given any indication of the size of its congregation, the physical location of its facility, or the number of persons it employs. The petitioner must disclose sufficient information to reasonably allow the Service to determine that it has sufficient financial resources to pay the proffered salary.

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, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.