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U.S. Department of Justice

Immigration and Naturalization Service

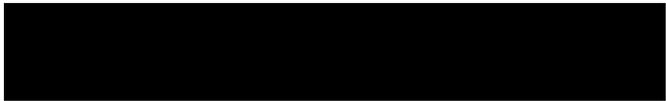
OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

File: EAC-00-178-53203 Office: Vermont Service Center Date: 18 SEP 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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

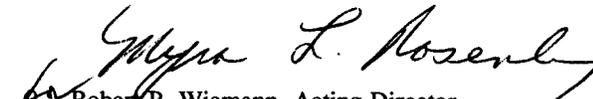
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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

The petitioner is a school. It 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 4th grade teacher at an annual salary of \$14,375.

The director denied the petition determining that the petitioner failed to establish that the beneficiary had been employed in a religious occupation for at least the two years preceding the filing of the petition as required.

On appeal, counsel for the petitioner argued that the beneficiary was employed for at least two years.

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).

In order to establish eligibility for classification as a special immigrant, the petitioner must satisfy each of several eligibility requirements.

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition 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).

To address this requirement, the petitioner submitted a letter dated May 2, 1997 from the Internal Revenue Service (IRS) showing that the petitioner was granted recognition as a tax exempt organization. The letter indicates, however, that the basis for this status is that the petitioner is an organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code (IRC). This section refers to schools. This section is not the section relating to religious organizations. Cf. section 170(b)(1)(A)(i) IRC.

There are several classifications of tax exempt organizations under section 501(c)(3) of the Internal Revenue Code and only those defined as "churches" pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) are qualifying organizations for the purpose of special immigrant religious worker classification. Parochial schools are incorporated as distinct legal entities and are separate from any church with which they may be affiliated. Therefore, the petitioner is not tax-exempt as a religious organization and is not a qualifying organization as defined in these proceedings. For this reason, the petitioner is ineligible to receive special immigrant classification for any prospective alien employees.

As the school is not a qualifying religious organization, any employment by the school does not constitute carrying on a religious occupation for a religious organization and thereby does not satisfy the two-year prior experience requirement.

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.