

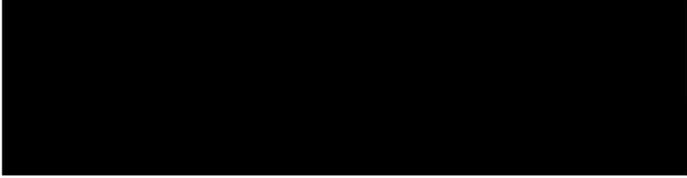


CA

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: WAC-98-212-50705 Office: California 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:



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 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 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 pastoral assistant at a salary of \$19,200 per year.

The center director denied the petition in a decision dated October 30, 2000. The director denied the petition finding that the beneficiary's past part-time, uncompensated service as a pastoral assistant with the petitioning church, while a full-time student, did not satisfy the requirement that he had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submitted a written brief arguing that the regulations do not require that the prior experience have been full-time and that the beneficiary's theological studies should be considered part of the prior experience. Counsel further argued that the beneficiary was engaged in a religious vocation.

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 a church affiliated with the Southern Baptist Convention. The beneficiary is a native and citizen of Korea who was last admitted to the United States on May 15, 1997, in F-1 classification, authorized to pursue graduate studies in theology. The record also reflects that the beneficiary received a bachelor's degree in Korea in 1997.

At issue in this proceeding is whether the petitioner has established that the beneficiary had had the requisite two years of continuous experience in a 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 July 30, 1998. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least July 30, 1996.

To address this requirement, the petitioner claimed that the beneficiary served an affiliated church in Korea as a "religious worker" on a part-time voluntary basis from January 1995 until his departure from Korea and volunteered as a pastoral assistant with the petitioning church since his admission, working approximately 28 hours per week.

It must be noted that the written decision denying the petition contains typographical errors and states, in part, "that the beneficiary is will be employed for a total period of 28 hours per week." On appeal, counsel addressed the apparent finding that the proposed position was for part-time employment. On review, it is concluded that the sentence was left in the final decision in error and is hereby withdrawn. The record has been reviewed *de novo*. It is concluded that the only ground for denial in the decision is the finding that the beneficiary's past part-time voluntary services did not satisfy the two-year prior experience requirement.

The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried

in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, the Service must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. Nor is there any means for the Service to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For all these reasons, the Service holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

Relying on Matter of Z-, 5 I&N Dec. 700 (Comm. 1954), counsel argued that the beneficiary's pursuit of theological studies was consistent with his vocation and constitutes the requisite prior experience. Counsel's argument is not persuasive.

In Matter of Z-, 5 I&N Dec. 700 (Comm. 1954), the Commissioner held

that continued study by an ordained member of the clergy was not interruptive of his or her continuous practice of a religious vocation. The beneficiary in this case is not an ordained member of the clergy and has never been engaged in a religious vocation as defined in this proceeding. See 8 C.F.R. 204.5(m)(2). There is no evidence that the denomination recognizes a lay pastoral assistant as a vocation involving the taking of life-long vows. Merely being a dedicated member of a denomination and pursuing studies for eventual ordination as a minister does not constitute the practice of a religious vocation. Accordingly, any period of time spent studying at a bible college does not constitute continuous work experience in a religious occupation and does not satisfy the prior experience requirement of this proceeding.

Counsel also relied on an unpublished administrative decision of this Service. Similarly, the unpublished administrative decision relied on by counsel does not have binding precedential value. Only decisions published and designated as precedents by the Associate Commissioner are binding on Service officers. See 8 C.F.R. 103.3(c). In addition, the Service is not bound by past decisions which may have been issued in error. See National Labor Relations Bd. v. Seven-up Bottling Co. of Miami, 344 U.S. 344, 349 (1953).

After a review of the record, it is concluded that the beneficiary's claimed donation of part-time voluntary services to his church, while engaged in full-time university studies, does not constitute continuously carrying on a religious occupation.

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.