



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

Identifying data deleted to
prevent identity unwarranted
disclosure



JAN 03 2002

File: [Redacted] Office: Texas Service Center

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

Public Copy

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, Director
Administrative Appeals Office

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

The petitioner is an individual who seeks classification 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 be employed by a church as a "lay brother" at an unspecified rate of remuneration.

The director denied the petition on the grounds that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification.

On appeal, the petitioner submitted a written statement alleging that the details in a letter describing the duties of the proposed position, quoted by the director, was the result of an incorrect translation of the Spanish-language original letter. The petitioner provided a new translation of the letter.

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 native and citizen of Mexico who was last admitted to the United States on February 12, 2000 in B-2 classification pursuant to a Mexican Border Crossing Card. The record reflects that he remained beyond any authorized stay and has resided in the United States since such time in an unlawful status. The petitioner seeks to be employed by the Iglesia Catolica Apostolica Americana church in Hialeah, Florida.

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

The petitioner must establish that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

In an English-language letter dated January 16, 2001, [REDACTED] Melo, Primate Bishop of the Iglesia Catolica Apostolica Americana church in Hialeah, Florida stated, "[the petitioner] is the Administrative Assistant of the church, being in charge of keeping accounting books, purchases and maintenance."

In a March 28, 2001 Spanish-language letter, translated and dated March 29, 2001, signed with an illegible signature for the "Monsignor" of the Iglesia Catolica Apostolica Americana, it was stated that the petitioner:

...is not a Bookkeeper neither a Carpenter, even though he helps keep records and to keep premises working well. The primary responsibility of [the petitioner] is his religious life and his compromise with the Church.

On appeal, the petitioner asserted that the March 29, 2001 translation of the letter by a notary was incorrect. The petitioner furnished a new translation of the Spanish-language

letter dated March 28, 2001, stating:

In this congregation, the members have the option to chose the Sacred Calling of Priesthood or simply the Religious Calling... to those that opt for only the Religious Calling, they call them "Lay Brothers."

The regulation defining a qualifying religious occupation is worded in a broad manner. This is to accommodate the range of religious occupations in various religious traditions. While many denominations have a tradition of lay "brothers" as either a religious occupation or vocation, the Service must look beyond the title of a position. The Service must look at the duties of the position, the sufficiency of evidence submitted, and the credibility of the claim.

In this case, the original January 16, 2001 job-offer letter from the priest of the prospective employer clearly stated the duties performed by the beneficiary. There is no dispute regarding translation in this letter. Duties such as bookkeeping and church maintenance are considered wholly secular duties that are not qualifying for classification as a special immigrant religious worker in a religious occupation. See 8 C.F.R. 204.5(m)(2).

In the second translation of the March 28, 2001 letter, the position of priest is distinguished from lay brother. This distinction, however, does not address the inconsistency with the original letter where the petitioner's duties were described as a lay administrative assistant and maintenance worker. Furthermore, without performing its own translation, the wide divergence in the two translations submitted by the petitioner brings into question the reliability of either translation and the original. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

The petitioner has asserted on appeal that the position of "lay brother" is a traditional function in the denomination. However, the petitioner has not identified the denominational affiliation of the church or furnished verification from an authorized official of that denomination regarding the position and the beneficiary's qualifications. In seeking special immigrant classification for employment with a United States religious denomination, it is normally a simple matter for an authorized official of the denomination to provide a detailed description of the position, verify that it is a traditional religious function, and verify the alien's qualifications. The petitioner in this matter has furnished only letters purportedly from an official of the individual church with unreliable translations. Merely going on

record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, it must be concluded that the petitioner has failed to establish that the proposed position of lay brother is qualifying as either a religious occupation or vocation for the purposes of this proceeding.

Beyond the discussion in the director's decision, the petitioner has failed to demonstrate eligibility on other grounds.

8 C.F.R. 204.5(m)(3)(i) requires a petitioner to submit proof that the prospective employer is a qualifying religious 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. The petitioner failed to submit such required documentation.

8 C.F.R. 204.5(g)(2) requires a prospective employer to submit its annual reports, federal tax returns, or audited financial statements to demonstrate the ability to pay the proffered wage. The petitioner failed to submit such required documentation.

8 C.F.R. 204.5(m)(4) requires that the prospective employer submit a detailed job offer specifying the terms of remuneration. The petitioner failed to submit such required documentation.

8 C.F.R. 204.5(m)(1) requires that the beneficiary of such a petition has been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition. To satisfy this requirement a petitioner must provide a comprehensive description of the alien's employment history during the two-year period. The Service does not recognize incidental voluntary activities as satisfying this requirement. The petitioner has failed to submit such required documentation.

As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

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.