

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

File: WAC-01-135-56175 Office: Western Service Center

Date: APR 10 2003

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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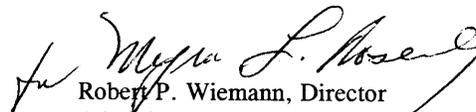
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center. The matter is now before the Administrative Appeals Office 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 an "bible teacher" at a salary of \$1,500 per month.

The acting director denied the petition finding that the beneficiary's claimed past service with the petitioner and another church on a part-time basis, while pursuing full-time university studies, did not satisfy the statutory requirement that he have been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, the petitioner states that a mistake was made regarding the beneficiary's work schedule and submits an entirely different work schedule.

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 recognized by the Internal Revenue Service with the appropriate tax exempt status. It claims a congregation of 125 members and an operating budget of \$121,000.00. The beneficiary is a native and citizen of Korea. He was last admitted to the United States on April 23, 1998, in an F-1 student classification authorized for a course of study of English as a Second Language valid through December 31, 1999.

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 beneficiary had the requisite two years of continuous experience in a religious occupation.

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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 March 20, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least March 21, 1999.

The petitioner initially submitted a letter indicating that the beneficiary was a Director of Religious Education (Sunday School) at Southern California Joyful Church in Redondo Beach, California from April 27, 1998 to December 31, 1999. The petitioner submitted evidence that from February 1, 1999 to January 31, 2000, the beneficiary was a full-time student at American International College in Los Angeles, California. The petitioner also submitted additional evidence that from March 23, 2000 to March 22, 2001, the beneficiary was a student at California Union University in Fullerton, California.

In response to a the Bureau's request for additional evidence, the petitioner, in a letter from its pastor, indicated that the beneficiary had worked as a "bible instructor" on a non-paying voluntary basis from January 3, 2000 to March 15, 2001 and submitted work schedule information totaling 15 hours per week. The letter indicated that from March 15, 1999 to December 31, 1999, the beneficiary worked a different work schedule totaling 15 hours per week.

On appeal, the petitioner states that a mistake was made in the description of the beneficiary's "work history" schedule and submits a new work schedule indicating that the beneficiary worked a total of 40 hours per week. The petitioner further indicates that the beneficiary is paid \$1,500.00 per month.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding the filing of the petition. The regulations are silent on the question of volunteer work satisfying the 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. 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.

In this case, the beneficiary was engaged in the occupation of a student in the United States pursuing a course of secular studies. His claimed voluntary participation in activities with his church does not constitute engagement in a religious occupation. Nor is there any credible evidence that his voluntary work was at the full-time level. Accordingly, it cannot be concluded that the beneficiary was continuously carrying on the position specified in the petition for at least the two-year period.

Furthermore, the record contains no indication of the beneficiary's means of financial support in the United States apart from a single bank statement and a claim that he was supported by funds from Korea. No evidence of the alleged financial transfers from abroad was submitted. Rather, there is conflicting tax documentation submitted that indicates that the beneficiary may have been employed as a business consultant. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation during the two-year qualifying period. For this reason, the petition may not be approved.

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

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

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.