

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-01-151-52903 Office: California Service Center

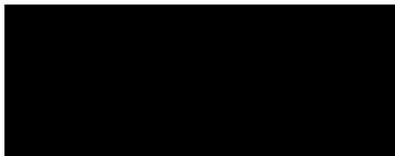
Date: APR 11 2003

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:



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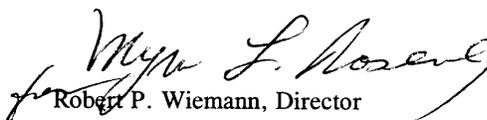
INSTRUCTIONS:

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, and 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).

The acting director denied the petition finding that the beneficiary's claimed volunteer work with the petitioning church was insufficient to 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, the petitioner, by and through its senior pastor, stated that there is no basis for requiring that the beneficiary be a full-time salaried employee and that her employment as a religious education teacher qualifies her for the benefits sought.

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. It has demonstrated the appropriate tax exempt status under section 501(c)(3) of the Internal Revenue Code. It did not provide a description of the size of its congregation. The beneficiary is described as a native and citizen of Argentina who was last admitted to the United States on June 28, 2000, as a WT visitor. The record reflects that she remained beyond any authorized stay and has resided in the United States since such time in an unknown status.

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 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 April 6, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 7, 1999.

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 filing. 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. 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 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 petitioner, by and through its senior pastor, stated in a letter dated February 16, 2001, that the beneficiary had been a volunteer "Religious teacher" for the past five years. The director found this claim insufficient to satisfy the two-year prior experience requirement.

On appeal, the petitioner, by and through its senior pastor, states, in pertinent part, that:

The beneficiary in this case began her work experience with the petitioner in [the] summer of 2000 as a Religious Education teacher of [REDACTED]. During this experience, the beneficiary was involved in the training of children of the church in an active, ongoing religious education program for students that were 5 years old or older. This program involved the process of reviewing applications for the program, interviewing and registering the participants and calling upon families with children who had not registered for the program, invite new parishioners, attend to the needs of the program, women [sic], sick, elderly and visit the poor.

Clearly the beneficiary qualifies with her experience as a Religious Education Teacher since 1996 in Argentina and continu[ing] to the present at [REDACTED] in Los Angeles, CA with additional duties and responsibilities that have been given her since then. Note that the decision of the director errors [sic], however, in stating that the prior experiences *must have been full-time salaried employment in order to qualify*. Clearly there is no basis for such finding in 8CFR204.5(m)(1).

The petitioner's argument is not persuasive. In order to establish that the beneficiary was "continuously carrying on a religious occupation," the above discussion noted that it must be full-time permanent employment. Part-time or intermittent employment does not satisfy the requirement. The petitioner's claim that the beneficiary is a full-time volunteer has not been demonstrated. Although the petitioner claims that the beneficiary has worked from 9:00 am to 5:30 pm Monday through Friday and from 10:00 am to 5:30 pm on Sunday, such claim is not corroborated by any documentary evidence. Therefore, absent any detailed description of the beneficiary's voluntary 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, religious or otherwise, during the two-year qualifying period. The petitioner's claim is further reduced by the fact that, in a letter dated February 20, 2002, the senior pastor of the petitioning church specifically stated that [the beneficiary] receives no monetary compensation for her services she is [sic] care and 'maintain [sic] by her husband."

A petitioner also must demonstrate the church's ability to pay the proffered wage.

Regulations at 8 C.F.R. § 204.5(g)(2) state, 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.** (Emphasis added.)

The petitioner indicates that the beneficiary, upon attainment of status, would be paid the "usual compensation for a teacher \$1,000.00 per month. The petitioner indicates that such payment would be made by [REDACTED] The

petitioner has not , however, furnished the church's annual reports, federal tax returns, or complete financial statements. Therefore, the petitioner has not satisfied the documentary requirement of this provision.

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.