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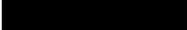
U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



APR 14 2003

File: 
EAC 01 139 52996

Office: VERMONT SERVICE CENTER

Date:

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



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

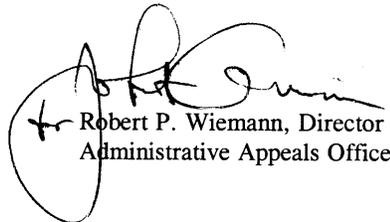
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office 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 Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision will be withdrawn and the petition remanded for further action.

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), to perform services as a religious instructor and director. The director determined that the petitioner had not established that the beneficiary was qualified for a religious worker position within the religious organization, or that the position qualified as that of a religious worker. The director also determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits a statement.

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

Denial. The denial of a petition for classification under section 203(b)(1), 203(b)(2), 203(b)(3), or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act) shall be appealable to the Associate Commissioner for Examinations. The petitioner shall be informed in plain language of the reasons for denial and of his or her right to appeal.

In his decision, the director discussed the facts pertinent to another petitioner, the [REDACTED] in its request for a female "teacher/catechist." The petitioner in this instance, however, is the Spanish United Pentecostal Church, Inc., and the facts in this petition are not relevant to the director's denial discussion.

The petition was filed on March 26, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from March 26, 1999 until March 26, 2001. The petitioner indicated on Form I-360, Petition for Amerasian, Widow, or Special Immigrant, that the beneficiary last entered the United States on May 7, 1991, and that he is currently out of status. Part 4 of the Form I-360 submitted by the petitioner indicates that the beneficiary has worked in the United States without permission. The beneficiary also furnished a letter explaining that he has held various jobs in the United States since 1991.

It is noted that the evidence included in the record does not meet

the requirements of 8 C.F.R. § 204.5(m). Upon a review of the record, the petitioner has not established that:

- (1) the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition;
- (2) the petitioner has extended a qualifying job offer to the beneficiary, or that the petitioner has had the ability to pay the beneficiary the proffered wage of \$15,000 per year since the filing date of the petition;
- (3) the beneficiary is qualified to engage in a religious vocation or occupation;
- (4) the beneficiary's activities for the petitioning organization require any religious training or qualifications;
- (5) the position of "religious instructor" is a qualifying religious vocation or occupation; or,
- (6) the petitioner qualifies as a bona fide nonprofit religious organization, in that the Internal Revenue Service letter of recognition from 1982 only denotes the church in Houston, Texas, and not the petitioner (subsequently created in 1992) in Washington, D.C., as a tax-exempt religious organization.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration and discussion of all issues pertinent to this case. The director may request any additional evidence he considers pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the Director of the Administrative Appeals Office for review.