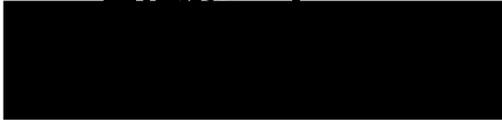


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

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



APR 25 2003

File: WAC-01-218-52385 Office: California 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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

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
for 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 that 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").

The acting director denied the petition finding that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a "senior pastor" for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioning church submitted a written brief arguing that the beneficiary was eligible for the benefit sought. Counsel submits evidence, previously submitted in response to the Bureau's request for additional evidence.

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 Korean church affiliated with the Presbyterian denomination. The size of the congregation or the number of employees is not disclosed. The beneficiary is described as a native and citizen of Korea who was last admitted to the United States on March 21, 1995, as a B-1 visitor, with an authorized stay until September 20, 1995. The record therefore reflects that the beneficiary remained beyond her authorized stay and has resided in the United States in an unlawful status since such time.

At issue in this proceeding is whether the beneficiary had been continuously carrying on the religious vocation or occupation specified in the petition for at least the two years preceding the filing of the petition.

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 June 22, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least June 21, 1999.

The pastor of the petitioner submitted a letter dated January 3, 2002, stating that the beneficiary has been their Religious Education Director/Instructor since December 1998. The beneficiary's duties were described, in pertinent part, as follows:

[The beneficiary] is responsible for developing and organizing religious program[s] and promoting religious education to church members, she conducts Bible study sessions, discussion groups and retreats, plans religious mission studies and activities and makes Bible Study Book on text [sic] and other materials for Sunday School and Academy [sic] for after school program. She teaches and educates religious instructors of the church about the Bible and some new project program and special activities. Also, her duties as a Religious Education Director/Instructor include counselling and guiding assistance to student and church members. She works 40 hours per week on a volunteer work basis, however, if R1-visa is granted to her, the church will pay her \$1,500.00 per month.

The director concluded that a claim of voluntary service to one's church was insufficient to satisfy the requirement of having been continuously engaged in a religious occupation.

On appeal, counsel states that the petitioner has submitted sufficient evidence to establish that the beneficiary has been continuously employed as "Religious Education Director/Instructor" for the two year period immediately preceding the filing of the petition. Counsel notes that the director erred in stating that the beneficiary was seeking a position as a "Senior Pastor," stating that the beneficiary was seeking and was serving in the position of Religious Education Director/Instructor.

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 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.

Here, the petitioner asserts that the beneficiary has been an unpaid volunteer with the church for over 2 years performing essentially many of the functions normally performed by the pastor. For the reasons discussed above, such activities do not constitute continuous experience in a religious occupation.

Beyond the decision of the director, the petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements establishing its ability to pay the beneficiary. As the appeal will be dismissed for the reasons discussed, this issue 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.