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

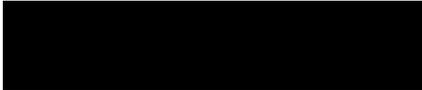
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536



AUG 21 2003

File: EAC 01 177 55771 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



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, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner 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 a gospel music director at an annual salary of \$22,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been a full-time religious worker for the entire two-year period immediately preceding the filing of the petition.

On appeal, counsel for the petitioner submits a brief and documentation arguing that the beneficiary clearly qualifies as a special immigrant religious worker. Counsel specifically asserts that: (1) for at least two consecutive years immediately preceding the filing of the petition, the beneficiary was employed on a full-time basis by churches of the same denomination in Jamaica and in the United States, and (2) the beneficiary came to the United States before October 1, 2000, in order to work for an affiliated religious denomination.

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 described as a parish of the [REDACTED] an international Pentecostal church with headquarters in Cleveland, Tennessee. The petitioner states that it has 226 members and three employees: a pastor, an organist, and a youth pastor.

The beneficiary is a native and citizen of Jamaica who last entered the United States on July 8, 2000 as a nonimmigrant visitor for pleasure (B-2), with authorization to remain until January 7, 2001. It appears that the beneficiary has remained in the United States unlawfully since the expiration of his authorized period of admission. The Form I-360 petition states that the beneficiary has not been employed in the United States without Bureau permission.

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

The primary issue to be addressed in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious occupation for two full years immediately preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, 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 25, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously employed as a religious worker since at least April 25, 1999.

The petitioner initially submitted documentation indicating that the beneficiary was employed by the [REDACTED] in Jamaica from 1994 to 1999. In a response to the director's request for additional information, the petitioner submitted the following:

- A December 2001 letter stating that the beneficiary

worked for the petitioner from January 8, 2001 to present, at a weekly salary of \$423.08.

- A photocopy of the beneficiary's passport describing his profession as "Production Supervisor."
- A January 2002 letter describing the beneficiary's weekly hours spent on religious work, totaling 40 hours.

The petitioner failed to provide evidence of when the beneficiary ended his church work in 1999 in Jamaica, or if and when he began full-time employment for the petitioner.

The director found that the evidence was insufficient to establish that the beneficiary had been performing full-time work continuously in the proffered position for the two-year period immediately preceding the filing of the petition.

On appeal, counsel for the petitioner states:

[The beneficiary] was employed by the [REDACTED] of Prayer in Jamaica from 1994 to April 23, 1999, as Gospel Music Director. On April 24, 1999 he began his full-time employment with the Church of God Prophecy, also in Jamaica, as an itinerant Gospel Music Director from April 24, 1999 until January 7, 2001. During the time of his employment as an itinerant Music Director, [the beneficiary] was sent by the Church of God Prophecy to the Antioch Church of God in New York to help the Church reorganize and expand its music program. He began his work with the Antioch Church of God on July 8, 2000, upon arriving in the United States. Continuing to be paid by the Church of God Prophecy in Jamaica, [the beneficiary] remained in their employ until January 7, 2001. Having been offered full-time employment by [the petitioner], an affiliated church in New York, [the beneficiary] decided to remain in the United States. On January 8, 2001, [the beneficiary] stepped into his role as Gospel Music Director of [the petitioner], and he continues his work there at present on a full time basis. . . .

. . . [The beneficiary] entered the United States on a B-2 Visa, having been sent by the Church of God Prophecy in Jamaica as an itinerant Gospel Music Director to the Antioch Church of God, a sister church in New York. . . . Although he stayed with his family and had an opportunity to visit with them, the underlying purpose of his visit was to help in the reorganizing of the music program of the Antioch Church of God. At this time, he was being paid by the Church of God Prophecy in Jamaica to work in this capacity.

Upon review of the record and the information submitted on appeal, the AAO concurs with the decision of the director to deny the petition. There is insufficient evidence contained in the record to establish that the beneficiary was continuously employed in a full-time salaried position as a gospel music director for the two years immediately preceding the filing date of the petition. The record contains no documentation in the form of pay statements from the beneficiary's claimed employers, annual financial reports from the beneficiary's claimed employers showing payment for his services, or other corroborative evidence to establish the beneficiary's continuous, salaried, full-time employment in a religious occupation. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to adequately establish that: (1) it has had the ability to pay the beneficiary the proffered wage since the filing date of the petition; (2) the beneficiary's activities for the petitioning organization require any religious training or qualifications; (3) the petitioner qualifies as a bona fide nonprofit religious organization. Since the appeal will be dismissed for the reasons stated above, these issues need not be examined further.

The petitioner bears the burden to establish eligibility for the benefit sought. In reviewing an immigrant visa petition, the Bureau must consider the extent of documentation and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individuals qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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.