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

**CI**

ADMINISTRATIVE APPEALS OFFICE  
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Washington, DC 20536



File: WAC 02 149 51266

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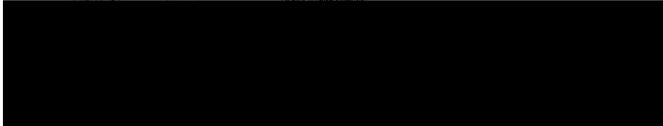
Date: **DEC 13 2003**

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:



**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 Citizenship and Immigration Services (CIS) 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.

*Cindy M. Gomez for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, California Service Center. The matter is now 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), to perform services as "Managing Director of Religious Education" for its organization. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization. The director also determined that the petitioner has not established that it has had the ability to pay the beneficiary the proffered wage since the filing date of the petition.

On appeal, counsel timely submitted a brief and additional evidence. Therefore, the record must be considered complete.

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

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, 2008, 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, 2008, 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).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue Code of 1986 at the request of the organization. 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 29, 2002. Therefore, the petitioner must establish that the beneficiary was engaged continuously as a religious worker from March 29, 2000 until March 29, 2002. The petitioner indicated that the beneficiary last entered the United States on April 2, 1998. The petitioner indicated that the beneficiary's status as R-1 was valid until June 8, 2002. The petitioner submitted the Approval Notice for the Form I-129, Petition for a Nonimmigrant Worker, with change of status to R-1 valid from June 9, 1999 until June 8, 2002. On Part 4 of the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, the petitioner indicated that the beneficiary has not worked in the United States without permission.

The first issue raised by the director to be addressed in this proceeding, is whether the petitioner has established that it qualifies as a bona fide nonprofit religious organization.

8 C.F.R. § 204.5(m) states, in pertinent part:

- (3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:
  - (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
    - (A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to *religious organizations* [emphasis added] (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
    - (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The record contains a copy of the IRS letter dated November 10, 1997, granting the petitioner, International Mission Crusade, tax-exempt status under section 501(a) of the Internal Revenue Code as

an organization described in section 501(c)(3). The IRS letter further states:

Because you are a newly created organization, we are not now making a final determination of your foundation status under section 509(a) of the Code. However, we have determined that you can reasonably expect to be a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi). Accordingly, during an advance ruling period you will be treated as a publicly supported organization, and not as a private foundation.

The IRS letter indicates the advance ruling period ended on December 31, 2001.

The director's decision states, in part, that the basis for the petitioner's tax-exempt status under the provisions stated in the IRS letter, "refers to charities that receive a substantial part of their support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public. This section is not the one relating to religious organization[s]."

On appeal, counsel asserts that sufficient evidence was provided to establish that the petitioner's tax-exempt status is "under Section 501(c)(3), relating to religious organizations." Counsel states: "The IRS has treated and continues to classify Appellant as a religious organization, exempt from taxation in accordance with Section 501(c) of the Internal Revenue Code of 1986." Counsel refers to a letter from the IRS dated July 3, 2002, submitted on appeal.

The IRS letter of July 3, 2002, states that it modifies its earlier letter relating to the advance ruling period. This IRS letter states:

Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect. Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi).

It is noted that the IRS has granted tax exempt status to the petitioner as a foundation and publicly supported organization

described in section 509(a)(1) and 170(b)(1)(A)(vi), and not under section 170(b)(1)(A)(i), as it relates to religious organizations. The IRS has found the petitioner to be eligible for tax exemption as a "publicly supported foundation" and not as a religious organization. As noted above, the regulations require that the petitioner demonstrate that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

In the alternative, the petitioner could have submitted documentation that would have complied with the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B).

The record includes a letter dated November 14, 1997, from the State of California Franchise Tax Board, stating the organization is exempt from state franchise or income tax, as a religious corporation. The record also includes the petitioner's Articles of Incorporation, filed with the State of California and dated September 3, 1997, which include a proper dissolution clause. The record does not, however, include a completed IRS Form 1023, and the Schedule A supplement which applies to churches and other religious organizations. Therefore, the submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B), and the petition must be denied for this reason.

The second issue raised by the director to be addressed in this proceeding is whether the petitioner has established its ability to pay the beneficiary the proffered wage.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

The director's decision states, "The petitioner in this matter submitted copies of its bank balance statements. These documents do not satisfy the regulatory requirement. The petitioner has not

furnished the evidence as specified in 8 C.F.R. 204.5(g)(2). Therefore, the petitioner has not satisfied the documentary requirement." It is noted, however, that the petitioner submitted documentation beyond its bank statements.

The record includes the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for the years 2000 and 2001. For the year 2000, the Form 1040 shows "Business Income" of \$25,049, and lists "Your occupation" as "Missionary." The IRS Schedule C, Profit or Loss From Business, lists the beneficiary's principal business or profession as "Missionary Service" and shows "Gross receipts or sales" of \$30,000, with net profit of \$25,049. For the year 2001, the Form 1040 shows "Business Income" of \$24,922, and again lists "Your occupation" as "Missionary." The IRS Schedule C again lists the beneficiary's principal business or profession as "Missionary Service" and shows "Gross receipts or sales" of \$30,000, with net profits of \$24,922.

The record contains cancelled checks in the amount of \$2,500, dated one per month, from the petitioner to the beneficiary for the ten-month period of January 2001 through October 2001. The petitioner submitted statements in the name of the International Mission Crusade from the California Center Bank, Business Checking Account, reflecting balances from October 31, 2001 through April 30, 2002. The bank statements reflect that the check numbers issued to the beneficiary and dated September 1, 2001 and October 1, 2001, were not paid out until November 9 and November 27, 2001. The January 2002 statement shows one check in the amount of \$2,500. The statements for February, March and April 2002 reflect no payments of \$2,500, equivalent to the proffered wage.

The record contains a "Certificate of Sponsorship" dated April 23, 2000, stating that the beneficiary "had been sponsored by Ongnyon Cheil Church... and also has been sponsored by Chongshin Mission Church." On appeal, counsel resubmits this as evidence of the petitioner's ability to pay the proffered wage. The certificate of sponsorship, however, indicates that the beneficiary was sponsored by the Ongnyon Cheil Church and the Chongshin Mission Church, and not by the petitioner, and thus does not illustrate the petitioner's ability to pay the proffered wage. In addition, the certificate of sponsorship does not provide any detail as to the dates of sponsorship, amount of money, or other forms of assistance provided to the beneficiary, nor does it address the nature of any relationship or common denominational ties between the churches that sponsored the beneficiary and the petitioner.

On appeal, the petitioner also submitted a "Certificate of Sponsorship" from the America Chungnong Presbyterian Church, dated December 23, 2002, which indicates that this church supports the International Mission Crusade at \$2,000 per month. The certificate is signed by Reverend Yong Bok Kim, the same person who signed this I-360 petition on behalf of the International Mission Crusade. The certificate does not indicate the timeframe of this support or other detail. The petitioner also submitted a November 2002 bank statement for "The America Chung Nong Church," and a letter from an official of Bank of America, providing the balances of this church's accounts. These balances do not have bearing on the petitioner's ability to pay, as the record does not demonstrate that the America Chung Nong Church is obligated to pay expenses incurred by the petitioner.

On appeal, the petitioner also submitted a single page document, entitled "International Mission Crusade 2001 Annual Report." While the document is purported to be an "annual report," there is no evidence that the figures have been properly audited or that the document is an actual annual report as required in the regulations. This document shows income of \$87,394.97, with expenses totaling \$87,267.27, including \$41,500 paid in salaries, and a balance carried forward of \$127.70.

While the petitioner has attempted to provide documentation of its ability to pay the proffered wage, it has not submitted annual reports, federal tax returns, or audited financial statements that would illustrate the assets and liabilities of its organization and permit a conclusive determination on its ability to pay the proffered wage in accordance with 8 C.F.R. § 204.5(g)(2).

Beyond the decision of the director, it is noted that the record is inconsistent regarding whether the beneficiary received a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state how the alien will be solely carrying on the religious vocation and describe the terms of payment for services or other remuneration. The letters of the petitioner provide conflicting information concerning the job offer. The petitioner's "Letter of Intention" and "Certification of Employment" both dated March 11, 2002, indicate that the beneficiary's salary is, and will be, \$2,500 per month, equivalent to \$30,000 per year. In a "Certification of Employment" letter dated September 5, 2002, the petitioner writes that the salary is "\$25,000 per year." The

record does not reflect an explanation for the change in salary that occurred in the period between the two letters.

Another issue not raised by the director that will be addressed in this proceeding is whether the beneficiary's activities for the petitioner require any religious training or qualifications.

In response to the director's request for additional information, the petitioner stated that for the proffered position, the "Minimum Education is College Degree. Need 2 years Experience necessary to do the job." The record reflects that the beneficiary holds a degree in Mechanical Engineering, from the College of Engineering, Hanyang University, Seoul, Korea. The certificate of graduation and the transcripts indicate that he was admitted in March 1981 and completed studies in February 1988. An undated translation of the letter entitled "Employment Verification," from Pastor Bong Su Park, in Korea, certifies that the beneficiary served as: "1. Finance Management of Church, Clerk, 3 years; 2. Religious Educate [sic] Sunday School, Director, 3 years; 3. Young Adult Depart[ment], Management, 3 years." The letter does not specify when the beneficiary held the various positions, his hours of work, duties performed and whether he received remuneration. The petitioner also states that the beneficiary has worked with its organization since May 1998, and, thus, has two years of experience.

The petitioner indicates the weekly breakdown of the duties of the position as follows:

- a) To have training course for missionary candidates: 5 hrs.;
- b) Managing subject to teach [sic] will be culture, language mission, personal and group evangelism, counseling, pasturing, Christian ethics, Experience of mission work: 16 hrs.;
- c) Advertising activities of the corporation in Christian Newspapers: 3 hrs.;
- d) Will have [sic] missionaries annual convention and conference, 2 hrs.;
- e) Arrange missionary training programs [sic] will be open to public and cooperation with local church facility will be used for these training programs: 10 hrs.; [and]
- f) To start new church through missionaries: 7 hrs.

In addition, while the beneficiary may have a college degree in mechanical engineering and some experience as a volunteer, the

description above indicates that a majority of the duties to be performed relate to administrative and secular activities, and have not been shown to require religious training or qualifications. Much of the beneficiary's past experience would also appear to have been related to managerial and administrative matters. The petitioner furthermore states, "Our organization is training missionary and sending missionary to the Local & World. [sic] Not like local church. So we do not have congregation members. Currently 2 people are receiving compensation." Under such circumstances, the petitioner has not shown that it has other resources to relieve the beneficiary from performing a majority of administrative and secular duties.

It is also noted that the record does not reflect the denomination of the petitioner, and show that the beneficiary was a member of the petitioner's religious denomination during the two-year period preceding the filing date of the petition. As the petition is not approvable on the grounds discussed earlier, this issue need not be examined further.

It should also be noted for the record that based on the inability to provide sufficient documentation in order to fulfill the evidentiary requirements of the permanent resident petition, the beneficiary would not appear to be entitled classification as an R-1 religious worker. The record reflects that the beneficiary previously had R-1 status with a validity date through June 8, 2002. A mere showing that the beneficiary has been in the United States in nonimmigrant R-1 status since June 9, 1999, does not adequately establish that he was continuously working in a qualifying religious vocation for the two year period immediately preceding the filing date of this petition.

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.