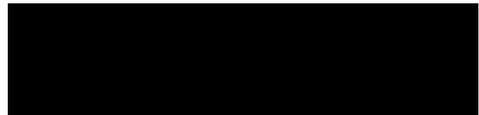


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U.S. Department of Homeland Security
Citizenship and Immigration Services

Identification of individuals to
prevent unauthorized entry and
invasion of personal privacy

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



DEC 19 2003

File: WAC 99 060 50338

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



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 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 N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the California Service Center. The appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen. The motion will be granted. The director's decision will be affirmed.

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 employ him as an assistant director/religious education instructor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition.

On appeal, counsel stated that a brief and/or evidence would be submitted within 30 days of the filing date of the appeal. As of January 28, 2002, no brief or additional evidence had been received by the AAO.

The Director of the AAO summarily dismissed the appeal on January 28, 2002, because the petitioner failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On motion, counsel states that a brief was submitted within 30 days of the filing date of the petition, but the director of the AAO failed to consider the brief in his decision. Counsel submits a copy of the brief and a photocopy of a United States Postal Service Form PS 3811, Domestic Return Receipt, showing counsel mailed material to the California Service Center on August 22, 2000. The California Service Center received the package on August 23, 2000.

In his brief, counsel asserts that the evidence of record is sufficient to establish that the beneficiary was engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

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 Revenue 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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

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.

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

The issue to be addressed in this proceeding is whether the

petitioner has established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(m) (1):

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 December 22, 1998. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from December 22, 1996, until December 22, 1998. The petitioner indicated on Form I-360, Petition for Amerasian, Widow, or Special Immigrant, that the beneficiary last entered the United States on January 25, 1994, as a nonimmigrant B-2 visitor with stay authorized to July 25, 1994. The record shows that the beneficiary was granted change of status from nonimmigrant B-2 visitor to F-1 student on December 30, 1994. The record contains no evidence regarding the completion date of the beneficiary's studies, but the petitioner indicated on the Form I-360 petition that the beneficiary was not in valid nonimmigrant status as of the filing date of the petition.

The record contains a "Certificate of Church Service" from Pongilchon Church in Korea. Reverend Yong Kwan Kim, the pastor of that church, stated that the beneficiary served the church as an acting deacon in 1984; as a teacher in the children's department from 1985 to 1987; and as a leader of the children's department from 1988 to 1990.

In a "Letter of Employment" that was submitted with the initial Form I-360 petition, Reverend Ki Hyung Han, the pastor of the petitioning church, stated that the beneficiary had served the church as Assistant Director/Religious Education Instructor since June 1994.

In a letter dated April 28, 2000, Reverend Han stated that the petitioner is unable to provide any pay-stubs for salary paid to the beneficiary during the period from December 22, 1996, to December 22, 1998, because the beneficiary served the church on a voluntary basis during that period.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he or she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a fulltime student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he or she is engaged in other secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who, in accordance with their vocation, live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be fulltime and salaried. To find otherwise would be outside the intent of Congress.

In this case, the petitioner states that the beneficiary served the petitioning church as an assistant director/religious education instructor on a voluntary basis during the period from December 22, 1996, to December 22, 1998. Therefore, the beneficiary's work experience does not constitute qualifying experience in the occupation. The petitioner has not shown that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two full years immediately

preceding the filing date of the petition, and the petition must be denied for this reason.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered salary. The petitioner has not provided copies of its annual reports, federal tax returns, or audited financial statements as required under 8 C.F.R. § 204.5(g)(2). The petitioner also has not established that the proffered position qualifies as a religious vocation or occupation. The petitioner also has not provided sufficient evidence to demonstrate that the position is a traditional religious function within the religious organization; that the duties of the position are directly related to the beliefs of the religious organization; that the position is defined and recognized by the governing body of the religious organization; or that the position is traditionally a full-time, salaried position within the religious organization. Finally, the petitioner has not shown that the beneficiary qualifies for the position within the religious organization. The petitioner has not provided any evidence setting forth the requirements for the position or how the beneficiary satisfied those requirements. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

In reviewing an immigrant visa petition, the AAO must consider the extent of the documentation furnished 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).

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 previous decision of the director of the AAO is affirmed.