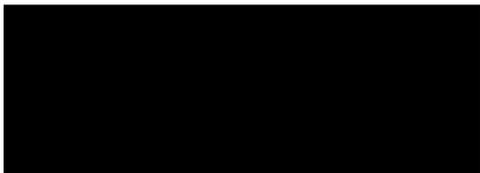


PUBLIC COPY

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

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



File: WAC 00 145 52376 Office: CALIFORNIA SERVICE CENTER

Date:

JUL 10 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 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, California Service Center. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion to reconsider. The motion to reconsider will be granted; the case will be remanded for further consideration.

The petitioner is an independent church, seeking 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 an associate pastor.

The director denied the petition, finding that the petitioner was not a qualifying religious organization for the purpose of special immigrant classification of any prospective employees.

On appeal, counsel for the petitioner submitted evidence that the petitioner has the appropriate tax-exempt status.

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 an independent church, founded by an ordained Presbyterian minister. The beneficiary is a native and citizen of Korea last admitted to the United States on January 6, 1999 as a B-2 nonimmigrant visitor for pleasure.

At issue in this proceeding is whether the petitioner is a qualifying religious organization for the purposes of this type of visa petition proceeding.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that 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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

To address this requirement, the petitioner initially submitted a copy of its federal employer identification number (EIN). The petitioner subsequently submitted a copy of a tax exemption notice from the State of California Franchise Tax Board. On motion, counsel from the petitioner submitted a letter from the Internal Revenue Service dated July 25, (illegible), showing that it was granted tax-exempt status as a religious organization under section 501(c)(3). The petitioner has overcome the director's objection.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary has been a member of the petitioner's denomination for at least two years immediately preceding the filing of the petition as required by the statute and regulations. In a request for additional evidence, the director requested documentation on this issue. In response, the petitioner provided a letter from its Pastor stating that:

[The petitioning church] is an independent church. Even though, it is not affiliated or part of the Assembly of the Presbyterian Church . . . I am preaching in accordance and consistent with the Presbyterian Church philosophy; affirming and preaching the statement of faith and form of worship; following the code of conduct in accordance with the doctrine and discipline of the Presbyterian Church; and performing religious services and ceremonies and giving sermons in my church and

religious congregation in accordance and consistent with my belief in and conviction of the Presbyterian faith. Therefore, I cannot produce any registry, director or association between the churches.

I am attaching herewith, as exhibit "3," the letter from the Korean counterpart affirming that the church in Korea, the General Assembly of Presbyterian Church in Korea, and my church, The Calling Church in Korea, are of the same denomination, i.e., Presbyterian Church on the basis of embracing, following, preaching and affirming the same statement of faith, form of worship, formal code of discipline and doctrine and practicing religious services on the basis of the Presbyterian Church's philosophy.

The director's decision was deficient in that it failed to examine the issue of whether the beneficiary had been a member of the petitioner's denomination for at least two years prior to the filing of the petition.

8 C.F.R. § 204.5(m) (2) states, in pertinent part, that:

Religious denomination means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

Accordingly, this matter will be remanded for the purpose of a new decision. The director must afford the petitioner reasonable time to obtain evidence to establish that the petitioning church and the church in which the beneficiary was ordained, the Presbyterian Church in Korea, are of the same religious denomination. The director shall then render a new decision based on the evidence of record.

ORDER: The director's decision of date is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.