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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



File:

Office: VERMONT 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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 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 a Bible teacher at an annual salary of \$21,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been a member of the denomination for the two years immediately preceding the filing of the petition and that the beneficiary has had the requisite two years of continuous experience in a religious occupation. The director further determined that the petitioner had failed to establish that the offered position qualifies as a religious occupation for the purpose of special immigrant classification, and that it had extended a valid job offer to the beneficiary.

On appeal, counsel for the petitioner asserts that there is sufficient evidence on the record to establish that the petition should be approved.

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 beneficiary is a native and citizen of Korea. According to the evidence on the record, the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on April 23, 1999 and subsequently changed his status to an R-1 nonimmigrant religious worker on April 22, 2000.

The first issue to be addressed in this proceeding is whether the petitioner extended a valid job offer to the beneficiary.

8 C.F.R. § 204.59m(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

Here, the petitioner has tendered a job offer with terms of remuneration. The petitioner has overcome this objection of the director.

The second issue to be addressed in this proceeding is whether the petitioner established that the beneficiary has been a member of its denomination for the two-year period immediately preceding the filing 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.

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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 director determined that the petitioner had provided no evidence that the beneficiary had been a member of the same denomination. This portion of the director's decision shall be withdrawn.

In a letter written by its pastor, the petitioner states that the beneficiary has been a member of its religious denomination (Presbyterian) since 1990 to date.

The third issue to be addressed in this proceeding is whether the petitioner established that the beneficiary has the requisite two years of continuous experience in the religious occupation.

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

In a request for additional evidence, the director requested that the petitioner submit evidence that the beneficiary had been salaried during the requisite two years. The petitioner provided the Bureau with letters of employment for the beneficiary indicating that he was employed abroad from January 1, 1994 to April 1, 2000, as well as a letter of employment from the petitioner indicating that the beneficiary had been employed from April 1, 2000 to the filing date. The petitioner submitted copies of the beneficiary's 2000 Form W-2 and federal tax return showing that he earned \$5,250 in 2000. The petitioner also provided the Bureau with copies of cancelled checks made payable to the beneficiary.

The director determined that the evidence was insufficient to establish that the beneficiary had been continuously employed on a salaried basis throughout the requisite two-year period. The AAO concurs. The petitioner states that it intends to pay the beneficiary \$21,000 per year. The evidence on the record shows that the petitioner paid the beneficiary only \$5,250 in wages in 2000. The AAO considers the W-2 to be definitive evidence of wages paid, rather than copies of cancelled checks. For this reason, the petition may not be approved.

The next issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation or vocation for the purpose of special immigrant classification.

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

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation or vocation as defined in the regulations.

The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

In this case, the petitioner asserts that:

We wish to employ [the beneficiary] as a "Bible Teacher" on a permanent, full time basis at the annual salary rate of \$21,000.00; effective as soon as practicable. In this capacity, [the beneficiary] will be responsible for teaching the Bible, Hymns, and the Korean Culture; as well as developing study courses, counseling

students, and providing religious, moral and spiritual support and guidance to the children (and their parents) of the congregation.

In response to the director's request for additional evidence, the petitioner provided the Bureau with an outline of the beneficiary's job duties and work schedule. The petitioner has overcome this objection of the director.

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.