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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

**Identifying cases intended to  
prevent clearly unwarranted  
invasion of personal privacy**



File: EAC 01 144 50205 Office: Vermont Service Center Date: **JUL 17 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:



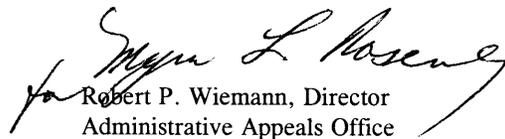
**INSTRUCTIONS:**

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 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 her as a youth minister at a weekly salary of \$300.

The director denied the petition, finding that the petitioner had failed to establish that the past and proposed duties of the position qualify as a religious occupation. The director also found that the petitioner had failed to establish that it has the ability to pay the proffered wage.

On appeal, counsel for the petitioner addresses the director's findings and submits additional documentation.

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 an evangelical church formed in 1999 that has a congregation of approximately 150 members. Evidence is contained in the record that the petitioner is recognized by the Internal Revenue Service as exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(a)(c).

The beneficiary is described as a native and citizen of St. Vincent, British Virgin Islands, who last entered the United States on August 20, 1993 as a nonimmigrant visitor for pleasure with permission to remain until August 24, 1993. She has remained unlawfully in the United States, since the expiration of her authorized period of admission, for almost ten years. The petitioner indicates that the beneficiary is single, has never been unlawfully employed while in the United States, and is financially supported by her cousin.

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

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

*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 as defined in these proceedings. 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. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established

by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner seeks to employ the beneficiary as a youth minister at a weekly salary of \$300.00, or \$15,600.00 annually. The petitioner presents a written statement regarding the proffered position as follows:

The individual is required to have special religious training in biblical teachings, high school and or college degree in Liberal Arts or Management and at least three years working directly with Youths. The duties of the individual will be as follows:

- To train Sunday School teachers
- To teach Sunday School classes
- To set the Curriculum for the Sunday School classes and Youth programs
- To manage, coordinate the Youth choir
- To set up and coordinate youth outreach programs in and around the surrounding communities
- To participate in missionary work
- To plan and implement programs to share the Gospel to those who are homebound, in hospitals and nursing homes
- Youth counseling
- To train, coordinate and promote youth worship services
- To set up and coordinate Bible study programs

Due to the responsibilities of the religious work involved it is essential that the individual filling the position have the right background in formal religious instructions and [a] through [sic] knowledge of the teachings of the Bible. In addition, religious devotion and generosity of one [sic] self are essential for the

position.

The petitioner further asserts that the beneficiary is qualified to perform the duties of the position:

[The petitioner] was founded on June 11, 1999, and from its inception [the beneficiary] has been a prominent and active member. [The beneficiary] began serving as a Sunday School Teacher and Worship leader. She also is very active in the community outreach programs and house-to-house visitation, bringing the word of God and comfort to those who are sick and shut in. [The beneficiary] has not been officially employed, but a position is awaiting her upon approval of this application within our organization. However, her cousin . . . who is also her guardian supports her.

Evidence submitted with the initial petition and on appeal reflects that the beneficiary was issued a certificate for completion of a business studies course at St. Vincent Technical School in 1992; received her high school equivalency diploma in 1995; completed a course in WordPerfect 6.0 in 1996; was given a certificate of appreciation for services rendered as a Sunday School Teacher from 1994 through 1998; received a certificate of recognition as a Christian Worker in 2000; and received an Associate in Arts degree in 2001. In addition, the petitioner certified her for ordination as a youth minister in March 2001. In November 2001, the Full Gospel Tabernacle Association World Wide, Inc. granted her a license to be a youth minister for the petitioner.

After a careful review of the record, it is concluded that the petitioner has not established that the proposed position constitutes a qualifying religious occupation. First, the petitioner has submitted no documentation that the position is a traditional full-time, paid occupation in its denomination. Second, the duties of the position do not appear to constitute the duties of a religious occupation as contemplated by the regulations. The duties identified indicate that the position consists of activities normally expected of an active member of a religious congregation rather than a position that would be filled by a full-time salaried employee who completed training in preparation for a career in religious work. Particularly in this case where the petitioner is a recently established church having only 150 members in its congregation.

The petitioner must also establish that the beneficiary has the requisite two years of continuous experience in a religious occupation.

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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 March 30, 2001. Therefore, the petitioner must establish that the beneficiary has been continuously engaged in a religious occupation for the two-year period beginning on March 30, 1999.

The statute and its implementing regulations require that a beneficiary has been continuously carrying on the religious occupation specified in the petition for the two years preceding the filing date of the petition. The regulations are silent on the question of volunteer work satisfying the requirement. The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule.

The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution.

The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, the Service must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained

ministry without being considered to be carrying on a religious occupation.

It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. Nor is there any means for the Bureau to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For all these reasons, the Bureau holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

In this case, the petitioner asserts that the beneficiary has served its ministry as an unpaid volunteer. The specific dates, days worked, and number of hours per day that the beneficiary has voluntarily served the petitioner are not noted in the record. For the reasons discussed above, such service does not constitute continuous experience in a religious occupation. The Bureau is, therefore, unable to conclude that the beneficiary had been engaged in a full-time religious occupation during the two-year qualifying period.

A further issue in this proceeding is whether the petitioner has the ability to pay the beneficiary the proffered wage.

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

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 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 annual reports, federal tax returns, or audited financial statements.

On appeal, the petitioner submits financial statements, prepared by a certified public accountant, for the years 2000 and 2001. The documentation supplied shows that in 2000, the petitioner's assets and liabilities each equaled \$28,873.00. In 2001, its assets and liabilities each increased substantially to \$66,323.00. The cash balance for both years was between \$10,000.00 and \$11,000.00. In 2000, revenues equaled \$46,527.00 and operating expenses equaled \$32,919.00, leaving a surplus of \$13,608.00. In 2001, revenues equaled \$72,228.00 and operating expenses equaled \$29,421.00,

leaving a surplus of \$42,807.00. The petitioner's revenues are entirely based on tithes, offering and interest. With regard to operating expenses, no deductions for salaries are indicated.

It is concluded that the evidence presented is insufficient to establish that the petitioner is able to offer stable, permanent employment to the beneficiary. The petitioner had a sufficient surplus in operating expenses to pay the beneficiary the proffered wage for one year only, in 2001.

In reviewing an immigrant visa petition, the Service 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). Inherently, the Service must consider that the possible rationale for the instant petition is the organization's desire to assist the beneficiary to remain in the United States for purposes other than provided for under the special immigrant religious worker provisions.

Based on the record as constituted, the petitioner has failed to establish that the duties of the proffered position qualify for classification as a special immigrant religious worker; has failed to establish that the beneficiary has had the requisite two years of continuous experience in a religious occupation; and has failed to establish that it has the ability to remunerate the beneficiary in a permanent salaried position. Therefore, the appeal will be dismissed.

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 individual's 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, that burden has not been met.

**ORDER:** The appeal is dismissed.