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

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



CI

File: [redacted] 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: SELF-REPRESENTED

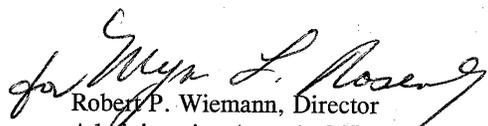
INSTRUCTIONS:

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 the matter 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 him as a bible school teacher at a wage of \$6.25 per hour.

The director denied the petition, finding that the beneficiary's claimed service with the petitioner did not satisfy the statutory requirement that he had been continuously carrying on a full-time salaried religious occupation for the two-year period immediately preceding the filing date of the petition.

On appeal, the petitioner asserts that the Bureau erred in its decision. In support of the appeal, the petitioner submits a letter from its pastor indicating that the beneficiary was working for other employers during the two-year qualifying period because the petitioner was in a growing stage. The pastor states that the petitioner is now bigger, better organized, and able to provide the beneficiary with not only the established wage, but with housing, travel, and accommodation costs as well. On appeal, the petitioner also submits a letter from the beneficiary expressing his desire to help guide the petitioner's new missions.

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 a church, a bona fide nonprofit organization. The beneficiary is described as a native and citizen of Venezuela who last entered the United States as a nonimmigrant visitor on June 22, 1996 with authorization to remain until December 21, 1996. The record reflects that the beneficiary remained beyond his authorized period of admission and has resided and worked in the United States since such time in an unlawful status.

The issue to be examined in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous work experience in the proffered position.

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 April 21, 2001. Therefore, the petitioner must establish that the beneficiary has been continuously engaged in a religious occupation for the two-year period beginning on April 21, 1999.

The record reflects that for tax years 1998 through 2001, the beneficiary was a paid employee of landscape and disposal companies, earning an annual income of \$18,728 to \$37,734, progressively. The petitioner has asserted that the beneficiary also provided services for it on a part-time voluntary basis since May 1999. There is no evidence in the record that the beneficiary has ever been paid or supported by the petitioner or any other religious organization in either a religious vocation or occupation.

As previously noted, the statute and regulations require the beneficiary have been continuously engaged in the religious occupation for the qualifying two-year period. The term "continuously" is not new to the context of religious workers. In 1980 the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of

minister when he was a full-time student who was devoting only nine hours a week to religious studies. [*Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).] This conclusion is on point with the situation found in the current proceeding.

The Bureau does not recognize the beneficiary's voluntary participation in the petitioner's activities as satisfying the requirement of having been continuously carrying on a religious vocation or occupation. Therefore, the appeal will be dismissed.

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.