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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: [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:



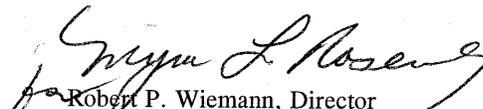
INSTRUCTIONS:

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 affiliated with the Assemblies of God denomination. 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 an assistant minister for its youth group.

The director denied the petition, finding that the petitioner failed to establish that the offered position qualifies as a religious occupation or vocation for the purpose of special immigrant classification, and that the beneficiary has had the requisite two years of continuous experience in a religious occupation.

On appeal, counsel for the petitioner submits a statement in support of the appeal, asserting that the beneficiary has been employed for the requisite two years, and that the offered position is a religious occupation.

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. The beneficiary entered the United States on August 10, 1999 as a B-2 nonimmigrant visitor for pleasure. After her entry, she changed her status to that of an R-1 nonimmigrant religious worker.

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

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

8 C.F.R. § 204.5(m) (2) states, 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 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 states:

As a full-time assistant minister for youth group, she will be required:

1. To direct every church worship services for youth group when a senior pastor is away;
2. To consult the youth church member;
3. To plan, organize and direct religious education program designed to promote religious education for the

youth;

4. To teach religious studies to children and youth groups; to preach the Gospel;
5. To counsel youth with both personal and religious problems individually and in groups;
6. To engage in church's various activities for youth.
[Sic.]

The director determined that the record is insufficient to establish that the beneficiary has been and will continue to be employed in a bona fide religious occupation. The director further determined that the evidence did not indicate that the beneficiary's primary duties in the proposed job require specific religious training beyond that of a member of its organization and it does not establish that they are traditional religious functions above those performed routinely by dedicated members of the congregation.

On appeal, the petitioner submits a letter stating:

It has been the practice of our church that we employ an assistant minister for youth group, all under the supervision of the senior pastor. The assistant minister for youth group has been preaching, leading Bible study and doing visitations for youth group. She also had numerous opportunities to counsel the youth and to direct music, summer camp and many other special revival meetings for the youth.

Our church intends to employ [the beneficiary] as an assistant minister for youth group in the permanent basis.

In order to perform the duties of the assistant minister for youth group, as a professional religious vocation, the incumbent must have been ordained as a minister, as well as holding the college degree in Theology as the required religious training for the position and 22 years of experience in same position at the Christian denomination churches. Our denomination has been accepting the experiences from abroad if the experience is in same Christian denomination churches. Also, one of the minimum requirements determined for this position is fluency in the Korean language. . . .

In review, it appears that the petitioner tailored the prerequisites for the position to the beneficiary's qualifications, except that the beneficiary was ordained in the Korean Presbyterian Seoboo Branch denomination whereas the petitioner is affiliated with the Assemblies of God denomination.

After a review of the record, it is concluded that the petitioner has not established that the position of "assistant minister to youth group" is a qualifying religious occupation. The petitioner failed to provide documentation that the position is a traditional full-time paid occupation in its denomination. Accordingly, it must be concluded that the petitioner has failed to establish that the position of assistant minister to youth groups constitutes a qualifying religious occupation within the meaning of section 101(a)(27)(C) of the Act.

The final issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

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 February 9, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least February 9, 1999.

The petitioner submitted a letter from its Senior Pastor stating:

In her working experience, [the beneficiary] has done quite an impressive religious work as an assistant minister for The [redacted] from May 1, 1988 to December 15, 1998. Since August 15, 1999, [the beneficiary] has faithfully served for our church as an assistant minister for youth group. [The beneficiary] has worked under her R-1 visa status since July 22, 2000.

The director determined that the record did not establish that the beneficiary has the required two years of experience with the United States entity in the same position prior to the filing of the instant petition.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding the filing of the petition. The Bureau interprets its regulations to require that the prior experience must have been full-time salaried employment in order to qualify.

To address this requirement, the petitioner provided evidence that the employment was salaried by submitting copies of the beneficiary's 2000 and 2001 income tax returns. The beneficiary

reported \$10,000 income in 2000 and \$20,000 income in 2001. The petitioner has offered to pay the beneficiary \$20,000 per year. No explanation was given for the discrepancy in pay for 2000. No evidence of the beneficiary's income in 1999 was provided. In review, the petitioner has failed to overcome the director's objection to approving the petition.

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.