

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: [REDACTED]
(LIN-01-157-51205)

Office: Nebraska Service Center

Date: JUN 05 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:

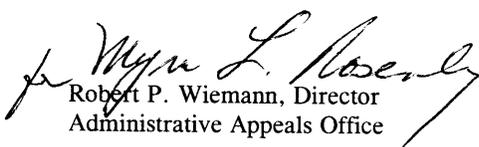
INSTRUCTIONS:

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, Nebraska Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It 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), to perform services as an "evangelical pastor."

The director denied the petition finding that the beneficiary's voluntary services with the petitioner did not satisfy the statutory requirement that he had been continuously carrying on a religious occupation for at least the two years immediately preceding the filing of the petition.

On appeal, counsel for the petitioner asserts that the beneficiary did fulfill the two year requirement.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in § 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).

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue Code of 1986 at the request of the organization. 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 issue in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petitioner is recognized by the Internal Revenue Service with the appropriate tax exempt status. The petition was filed on April 20, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as an evangelical pastor from April 20, 1999 until April 20, 2001. The record indicates that the beneficiary last entered the United States as a B-2 visitor on April 2, 1998. The record reflects that he remained beyond his authorized stay and has resided in the United States since such time in an unlawful status. The petition, Form I-360, indicates that the beneficiary has not worked in the United States without permission.

In a job-offer letter dated March 10, 2001, the petitioner indicated that the petitioning church wished to employ the beneficiary as a full-time evangelical pastor at a monthly salary of \$1,950.

In a letter dated April 18, 2001, the petitioner asserted that the proposed position, evangelical pastor, "is a church position name and is not meant to be a position for a minister/clergy." The petitioner further asserted that the beneficiary has a theology degree and has had more than six years of religious service experience as an evangelist/evangelical pastor in the foreign church in Korea.

In response to the Bureau's request for additional evidence, the petitioner described the proffered position as:

- a. Faith Sharing - personal

- Telling the good news of God's kingdom comes in Jesus Christ
- Invitational
- b. Congregation
 - Shares faith, hospitality, and invitation
- c. Training individuals to share faith in their daily lives
- d. Sharing the gospel the way Jesus did

The petitioner asserted that it has a congregation of approximately 120 members and has five employees. The petitioner claims that the beneficiary will receive compensation once the petition is approved, and describes the beneficiary's education and training as follows:

August 20, 1999 attended Northwest Bible College for two years to perform his task as a leader.
Awarded a Bachelor's degree in science from the Methodist Christian Theology.
Volunteered (trained) for six years in religious services.
From February 5, 1996 to March 28, 1998, employed as an evangelical pastor at the Bayhood Christian Church.
From April 20, 1999 to the present working at the petitioning church as an evangelical pastor.
Attended a "Doctrine of Denomination of Free Methodist" from August 9-11, 1999.
Attended a "Conference Meeting as a director of FMCC" from June 21-22, 2002.

On appeal, the petitioner provides a letter indicating that the beneficiary worked as a volunteer evangelical pastor to the Mission field (Tulalip Reservation) for Native Americans in North America from April 20, 1999 to April 20, 2001. The petitioner further indicates that since April 20, 1999, the beneficiary has volunteered his services at the petitioning church in teaching and counseling youth members as evangelical pastors.

The petitioner also provides a letter from Tony Lee, a church member, of the petitioning church who attests to his own and the beneficiary's volunteer work at the church.

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 Bureau 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.

The petitioner has stated that it is irrelevant whether the beneficiary "acquired that experience as a volunteer or as an employee."

The petitioner's argument, however, is not persuasive. As discussed above, common voluntary activities with one's religious institution must be distinguished from engaging in religious work as an "occupation." The plain meaning of the term occupation is an individual's primary endeavor and means of financial support. There is no evidence that the beneficiary engaged in this work as his "occupation." Furthermore, the petitioner did not disclose the beneficiary's means of financial support in the United States. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as tax documents, the Bureau is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

It is noted that on appeal, the petitioner cites 8 C.F.R. § 214.2(r)(3) and states that:

this section conflicts with your office's assertion that an R-1 religious worker will not qualify [sic] for an I-130 petition because s/he served the required two years of service in a church as a volunteer and not as a compensated employee, even though s/he meets all other conditions.

This reference, however, has no relevant bearing on the instant petition

as the beneficiary is not applying for R-1 nonimmigrant status.

Beyond the decision of the director, the petitioner has failed to demonstrate eligibility on other grounds.

Regulations at 8 C.F.R. § 204.5(g)(2) require that the prospective employer submit its annual reports, federal tax returns, or audited financial statements to demonstrate the ability to pay the proffered wage. The petitioner has not satisfied this requirement. Regulations at 8 C.F.R. § 204.5(m)(2) require that the proposed position constitutes a qualifying religious occupation. The record is insufficient to satisfy this requirement. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

In reviewing an immigrant visa petition, the Bureau 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).

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 within 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, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.