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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



JUN 05 2003

File: [REDACTED] (LIN 97-187-50773) Office: Nebraska Service Center Date:

IN RE: Petitioner: [REDACTED]

Beneficiary: EBENEZER U. GAAD

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DISCUSSION: The approval of the immigrant visa petition was revoked by the Acting Director, Nebraska Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Administrative Appeals Office (AAO) on motion to reopen and reconsider. The motion will be granted. The decision of the acting director revoking approval of the immigrant visa petition will be affirmed.

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), in order to employ him as a music minister.

The petitioner filed a Form I-360 Petition for Special Immigrant Classification, on June 11, 1997. The petition was approved on July 31, 1997. The approval of the petition was revoked by the acting director in a decision dated August 21, 2000 on the grounds that the petitioner failed to submit sufficient evidence to establish that the beneficiary had the requisite two years of experience as a minister of religion, that the petitioner had failed to submit a qualifying job offer showing that the beneficiary would be solely engaged in a religious vocation in the United States, and that the petitioner failed to establish its financial ability to support the alien beneficiary in the proposed position.

The petitioner, through counsel, filed an appeal from the director's decision and provided additional evidence. The Associate Commissioner, by and through the Director of the AAO, dismissed the appeal on August 23, 2001, finding that the petitioner had failed to overcome the director's grounds for denial. The AAO decision indicated that the petitioner had failed to submit a brief or additional evidence on appeal.

Counsel for the petitioner now files a motion to reconsider the AAO's decision dismissing the appeal and argues, in pertinent part, that significant evidence was submitted and received by the Bureau prior to the dismissal of the appeal, but was not considered.

The record reflects that a brief and other evidence was received by the AAO on October 12, 2000 and that such evidence was not considered in the director's decision dismissing the appeal. The evidence contained in the record will now be reviewed in its entirety.

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

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).

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

8 C.F.R. § 204.5(m) (3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c) (3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c) (3).

In addressing this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated August 31, 1964, reflecting that the church was granted tax exempt recognition under section 501(c) (3) of the Internal Revenue Code (IRC).

A petitioner also must establish that the beneficiary is qualified as a minister as defined in these proceedings.

Regulations at 8 C.F.R. § 204.5(m)(3) state, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

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

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The petitioner submitted a "Specialized Ministries Certificate" dated March 23, 2000, indicating that "by the imposition of hands and the prayers of the Presbytery, the beneficiary has been set apart and consecrated to the ministry of the Gospel."

The evidence of record is insufficient to establish that the beneficiary is a qualified minister for the purpose of special immigrant classification.

The petitioner submitted a position description dated May 14, 1997, as well as an organizational chart indicating that the beneficiary was formerly a youth minister and is currently a "music" minister and church religious worker. In order to establish that an alien is qualified as a minister of religion for the purpose of special immigrant classification, simply producing documents purported to be certificates of ordination, which are not based on theological

training or education, is not proof that an alien is entitled to perform the duties of a minister. *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). A lay preacher is not eligible. 8 C.F.R. § 204.5(m)(2). Here, there is no evidence that the beneficiary has any theological education or that the church requires a theological education in ordaining its ministers. For this reason, the petition may not be approved.

A petitioner also must establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

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.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

The petition was filed on June 11, 1997. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least June 11, 1995.

In this case, an official of the petitioning church testified that the beneficiary served a total of 1,797 hours as a "church worker in the music ministry" from January 1994 to December 1996 at a monthly salary of \$1,000.00.

The petitioner did not provide a detailed description of the beneficiary's means of financial support. Absent a detailed description of the beneficiary's employment history, supported by corroborating evidence such as certified tax documents, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

Furthermore, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of music during the two-year period or that he would be solely engaged as a music minister with the petitioning church. For this reason as well, the petition may not be approved.

The director found that the evidence to support this claim consisted most notably of a letter from the petitioner's pastor-in-charge dated June 30, 1997, describing such duties as driving kids in a jeepney, setting up musical instruments, taking down and putting away musical instruments and conducting youth music lessons. The director therefore concluded that the beneficiary had not been engaged solely as a minister of the religious organization for the two year period. For this reason the petition may not be approved.

The petitioner also must demonstrate that a qualifying job offer has been tendered.

Regulations at 8 C.F.R. § 204.5(m)(4) state, 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.

On appeal, counsel states, in pertinent part, that:

A projected income and expense statement for [the beneficiary], [named individual (other beneficiary)] and [named individual (other beneficiary)], [reflects] anticipated monthly income for the three of them as music ministers of \$6,625 per month in cash and in-kind donations, and projected expenses for the three music ministers totaling \$6,625 per month. Note that the church never represented that it would pay a cash salary of \$6,625 per month to each of the beneficiaries. The statement to this effect in the memorandum of April 6, 1999, from the Embassy in Manila appears to be a mistake.

Counsel submits a list of the names and associated pledges of 32 church members reflecting a total monthly income from pledges of \$2,025.

In this case, the petitioner has not submitted a credible job offer to the beneficiary, has not identified any corrected terms of remuneration, and has not shown that the alien would not be dependent on supplemental employment. Therefore, it has not tendered a qualifying job offer. For this reason as well, the petition may not be approved.

A petitioner also must demonstrate its ability to pay the proffered wage.

Regulations at 8 C.F.R. § 204.5(g)(2) state, 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.

In this case, the church has filed separate petitions for 3 alien workers as ministers of music. Therefore, the petitioner must specify the total wages offered and provide proof of its ability to pay the sum of those wages. The petitioner has not demonstrated the ability to pay three full-time workers who would not engage in supplemental employment. For this reason as well, the petition may not be approved.

The petitioner bears the burden to establish eligibility for the benefit sought. In reviewing an immigrant visa petition, the Service must consider the extent of documentation 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 church's desire to assist an alien member of its congregation 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 not adequately demonstrated that it has either the ability or the intention to remunerate the beneficiary in a permanent salaried position or that the beneficiary seeks to enter the United States solely to pursue this vocation.

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 acting director's decision dated August 21, 2000, revoking the approval of the immigrant visa petition, is affirmed.