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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



File: WAC 00 218 54128 Office: CALIFORNIA SERVICE CENTER

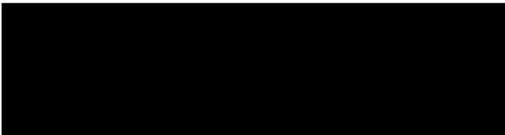
JUN 27 2003
Date:

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:



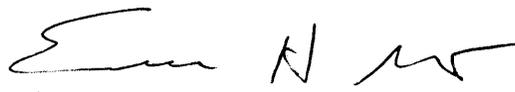
INSTRUCTIONS:

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 California Service Center Director denied the immigrant visa petition and reopened the case on its own motion to correct its errors. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant minister 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 minister.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition. The director further found that the petitioner failed to establish that the beneficiary was qualified as a minister of religion.

On appeal, counsel for the petitioner submits a brief that asserts that the beneficiary has the two years qualifying experience.

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 established in 1995 by the beneficiary and two other founders. The petitioner was incorporated in California in 1999. The beneficiary is a native of England and a citizen of Canada. The beneficiary's immigration status is unclear. The record reflects that the beneficiary has entered the United States on numerous occasions using his Canadian passport.

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

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

8 C.F.R. § 204.5(m)(3) states, 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.

8 C.F.R. § 204.5(m)(2) states, 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 "certificate of ordination" dated August 23, 1995, issued by the petitioning church, stating that the beneficiary is a minister.

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

The petitioner stated that it has about 30 members and two ministers. The petitioner indicated that to become a minister, a candidate must complete three weeks of training followed by one year's work as an assistant minister during which time he conducts twenty audited sessions with the public. The candidate must take another three week minister training course and thereafter, he becomes a minister. 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.

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.

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 July 31, 2000. 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 July 31, 1998.

As evidence that the beneficiary had been carrying on the vocation of a minister of religion, the petitioner provided the Bureau with two letters. The two letters each state that the writer has personal knowledge that the beneficiary "was actively pursuing his vocation through meditation" between the years of 1996-1999. The president of the petitioning organization wrote the Bureau:

the Church wishes to permanently retain the services of

[the beneficiary] as minister. [He] currently performs the role of minister abroad. The Board has intended on aiding [the beneficiary] to obtain a minister/religious worker visas since the Church's inception.

* * *

[The beneficiary] was a founding member of [the petitioning church]. Up to this point, [the beneficiary] has worked for five years as a minister. . . . he ministered regularly in England, whether or not to a formal congregation."

From 1995 to the present, [the beneficiary] has made frequent visits to the San Francisco area from his then home in England. In 1995, he helped found the Church of Consciousness. On August 23, 1995, at the Church's first worship, which was held in Aptos, California, [the beneficiary] was ordained. Thereafter, during his visits to the U.S., [the beneficiary] would often lead groups in worship and workshops, although he was never paid for such. . . .

From England, [the beneficiary] kept in contact with the Church's participants/members using electronic mail. E-mail provided a medium through which [the beneficiary] could minister and inspire Church members in the U.S. without actually being physically present.

The director determined that the evidence was insufficient to establish that the beneficiary has the two-year experience as a minister immediately preceding the filing of the petition.

In this case, the petitioner did not provide a detailed description of the beneficiary's means of financial support in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating evidence such as certified 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.

Furthermore, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period or that he would be solely engaged as a minister with the petitioning church. 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).

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.