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

ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536



File: EAC 01 172 52957 Office: VERMONT SERVICE CENTER

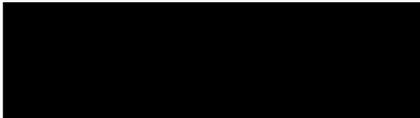
Date: JUN 27 2003

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:



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 him as an assistant pastor and evangelism director at an annual salary of \$23,000.

The director denied the petition, finding that the petitioner failed to establish that it is a qualifying religious organization, 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. The director further determined that the petitioner failed to establish that it has the ability to pay the proffered wage.

On appeal, counsel for the petitioner submits additional evidence and asserts that the beneficiary has been carrying on the vocation of minister for the two years prior to the filing of the petition.

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 Jamaica. The petitioner states that the beneficiary entered the United States on February 11, 1993 as a visitor (B-2).¹

The first issue to be addressed in this proceeding is whether the petitioner is a qualifying religious organization.

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).

The petitioner failed to provide evidence of tax exempt status when it initially filed the instant petition. In a request for additional evidence, the director requested as much. In reply, the petitioner supplied the Bureau with an Internal Revenue Service (IRS) document that was addressed to a Church of God located in Tennessee. On appeal, counsel for the petitioner provided the Bureau with letters from the IRS and the Church of God headquarters stating that the petitioner is covered by a group exemption granted to the Church of God. The petitioner has overcome this objection of the director to granting the petition.

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

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

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation

¹ The Bureau was unable to verify the beneficiary's date and manner of entry. The petitioner provided the admission number of the beneficiary's child in error.

include, but are not limited to, nuns, monks, and religious brothers and sisters.

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 or vocation 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.

The petitioner provided the Bureau with a list of the beneficiary's job duties that include the following activities: preaching, teaching, counseling, visiting the infirm, teaching Bible studies and evangelism, choir rehearsal, and feeding program.

The director determined that the record is insufficient to establish that the position of assistant pastor and evangelism director qualifies as a religious occupation because the petitioner failed to establish that religious training is a prerequisite. The director further noted that there was no evidence on the record that the beneficiary had received advanced religious training; therefore, he did not appear to qualify for a religious occupation. This portion of the director's decision shall be withdrawn. The petitioner has shown that the majority of the proposed job duties are activities relating to a traditional religious function.

On appeal, the petitioner asserts that the beneficiary has been carrying on the vocation of a minister; therefore, the petitioner must establish that the beneficiary is qualified as a minister as defined in the regulations.

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:

* * *

(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 letter from the pastor of the petitioning church that states that the beneficiary is "a Minister authorized by a recognized religious denomination called to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion." The petitioner also submitted certificates showing that the beneficiary completed an associate program in biblical studies, a general bible course, and a ministerial internship program.

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

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.

The petition was filed on April 16, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the vocation of minister since at least April 16, 1999.

The petitioner submitted evidence showing that the beneficiary did not become qualified as a minister until October 2000, less than two years before the filing of the instant petition. The petitioner failed to overcome this objection of the director.

The final issue to be reviewed in this proceeding is whether the petitioner established that it has the ability to pay the proffered wage.

8 C.F.R. § 204.5(g)(2) states, 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.

The petitioner has not furnished the church's annual reports, federal tax returns, or *audited* financial statements that are current as of the date of filing the petition. Therefore, the petitioner has not satisfied this documentary requirement. For this reason as well, the petition may not be approved.

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.