

**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

*ca*

**U.S. Department of Homeland Security**

**Citizenship and Immigration Services**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street N.W.  
Washington, D.C. 20536



File:

Office: VERMONT SERVICE CENTER

Date:

**NOV 14 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 Citizenship and Immigration Services (CIS) 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.

*Cindy N. Gomez for*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director of the Vermont Service Center and 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) in order to employ her as a pastoral assistant.

The director denied the petition, finding that the petitioner had failed to establish that: the offered position constituted a qualifying religious occupation for the purpose of special immigrant classification; the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two-year period immediately preceding the filing date of the petition; and the church had the ability to pay the beneficiary the proffered salary.

On appeal, counsel submits a brief and additional evidence.

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, 2008, 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, 2008, 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 first issue to be addressed in this proceeding is whether the petitioning church has shown it has the ability to pay the offered wage.

The petitioner states that the beneficiary will be paid a weekly salary of \$400 plus room, board, and clothing benefits. The director determined that the petitioner's financial statement was not sufficient to establish that the petitioner had the ability to pay the beneficiary's salary.

On appeal, counsel states that the petitioner has the ability to pay the offered wage. In support of his statement, counsel submits a letter from the certified personal accountant who reviewed the church's financial reports, along with cancelled paychecks and pay slips.

Pursuant to 8 C.F.R. § 204.5(g)(2) states:

*Ability of prospective employer to pay wage.* 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

The petitioning church has submitted unaudited annual financial reports for the years 2000 and 2001. On appeal, counsel submits a letter dated August 21, 2002 from the certified accountant who

submitted the initial reports. This letter states that, based on his review of the church's financial statements, the church has ample revenue to pay the beneficiary the offered salary. The accountant states:

We have reviewed the accompanying balance sheet of The [REDACTED] as of April 30, 2002 and the related statements of public support, revenue and expenses, changes in fund balances for the year then ended, in accordance with standards established by the American Institute of Certified Public Accountants.

All information included in these financial statements is the representation of management of [REDACTED]

A review consists primarily of inquiries of company personnel and analytical procedure applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Also submitted are photocopies of 17 cancelled checks issued to the beneficiary by the petitioner, two in the amount of \$1200 and 15 in the amount of \$1400, a total of \$21,000. These checks were issued during the period from March 2001 to June 2002. The petitioner also submitted eight pay slips purportedly representing salary payments to the beneficiary in the amount of \$1200 per month during the period from May to December of 2000, along with the beneficiary's Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements and IRS Form 1040 U.S. Individual Income Tax Returns for the years 2000 and 2001. The petitioner has not, however, furnished its annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not met the regulatory requirement, and the petition must be denied for this reason.

The second issue to be addressed in this proceeding is whether the petitioning church has shown that the offered position qualifies as a religious occupation.

On appeal, counsel states that the director incorrectly

identified the position as that of "youth pastor" rather than "assistant pastor" in his decision. Counsel explains that the church requires that its youth pastor be an ordained minister, but has no such requirement for its pastoral assistant position.

Pursuant to 8 C.F.R. § 204.5(m)(3), 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:

\* \* \*

(C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted.

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

The term "religious occupation" is defined at 8 C.F.R. § 204.5(m)(2) as follows:

*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. The regulation does not define the term "traditional religious function," but instead provides a brief list of examples. A review of the list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The non-qualifying positions are those that are primarily administrative or secular in nature, such as janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The AAO interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning religious organization.

It is noted that, although the director erroneously referred to the offered position as that of a youth pastor rather than a pastoral assistant in his decision, the AAO does not find this error to be prejudicial to the petitioner because the director properly analyzed the duties of the position in question and determined that the position does not qualify as a religious occupation.

The petitioner describes the duties of the position as follows:

As a pastoral assistant, [the beneficiary's] typical work will entail assisting ordained clergy members in conducting worship services, organizing and preparing for all weekly meeting and church events, as well as providing spiritual guidance to the church members.

The petitioner has not provided any evidence to show that the

duties of the position are directly related to the creed or beliefs of the denomination. Additionally, the petitioner submitted no documentation to show that the position is a traditional full-time salaried occupation in its denomination, or that the position is defined and recognized by the governing body of the denomination.

The record of proceeding contains two versions of the church's by-laws. The first version, which was submitted with the initial I-360 petition, does not identify any "nonministerial staff" positions or describe the duties of such positions. The second version of the church's by-laws, which was submitted in response to a Bureau request for additional evidence, identifies several "Nonministerial Staff" positions, including that of pastoral assistant, and identifies the requirements for each position. Nevertheless, this version of the by-laws was approved by the church's Board of Trustees on January 30, 2002, almost six months **after** the filing date of the petition. Since this version of the church's by-laws was not in effect at the time the petition was filed, this document does not show that the position of pastoral assistant is a full-time salaried position within the petitioning church, or that the position is defined and recognized by the governing body of the denomination. A petitioner must establish eligibility at the time of filing: a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner also has not shown that the duties of this position directly relate to the creed of the denomination. In view of the foregoing, it is concluded the petitioner has not submitted sufficient evidence to show that the position qualifies as a religious occupation as defined at 8 C.F.R. § 204.5(m)(2), and the petition must also be denied for this reason.

The final issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary had been continuously serving in a religious vocation or occupation for two years immediately preceding the filing date of the petition.

On appeal, counsel states that the beneficiary had the requisite two years of continuous employment as a pastoral assistant as of the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(m)(1):

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 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing in a religious vocation or occupation during the period from April 26, 1999 to April 26, 2001.

The record contains a "Certificate of Employment" stating that the beneficiary served So-Mang Church in Seoul, Korea, as a pastoral assistant from March 1, 1994 to July 22, 1999. The record also contains an employment letter signed by the petitioner's pastor stating that the beneficiary has served as an assistant pastor at his church since July 1999 at a salary of \$300 per week. Although the record contains evidence the beneficiary was an employee of the church from May 2000 to the filing date of the petition, there is no evidence in the record to show that the beneficiary was a salaried religious worker for the petitioning church from July 1999 to May 2000. In view of the foregoing, it is concluded the petitioning church has failed to show that the beneficiary had been continuously serving in a religious vocation or occupation during the two-year period immediately preceding the filing date of the petition.

Beyond the director's decision, the petitioner has not established that the beneficiary is qualified as a religious worker in the religious organization. As the appeal will be dismissed on the grounds discussed, this issue need not be addressed further in this proceeding.

In reviewing an immigrant visa petition, the AAO 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).

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.