

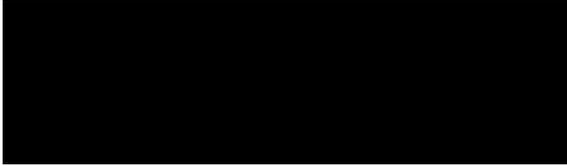
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**CI**

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



File:



Office: CALIFORNIA SERVICE CENTER

Date: **NOV 19 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: SELF REPRESENTED

**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 M. Gomez for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a religious organization. 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 a "Minister." The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two full years immediately preceding the filing of the petition. The director also determined that the petitioner did not establish that the beneficiary is qualified to engage in a religious vocation or occupation.

On appeal, the petitioner provided a statement, a letter certifying the beneficiary's ordination and employment in the Philippines, a Certificate of Ordination, and the Preamble to the Constitution and By-Laws of the Filipino Assemblies of the First-Born, Inc.

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

The first issue to be addressed is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date 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, 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).

8 C.F.R. § 204.5(m)(1) states, 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 petition was filed on July 12, 2001. Therefore, the petitioner must establish that the beneficiary was engaged continuously as a religious worker from July 12, 1999, until July 12, 2001. The

petitioner indicated that the beneficiary entered the United States on November 23, 1999, as a B-2 visitor. The Form I-797A indicates that the beneficiary's request for an extension of stay was authorized through November 20, 2000. On Part 4 of the Form I-360, Petition for Amerasian, Widow or Special Immigrant, the petitioner indicated that the beneficiary has not worked in the United States without permission.

The beneficiary did not enter the United States until November 23, 1999. On appeal, the petitioner states that for the period prior to the beneficiary's entry into the United States, she was a:

member of the [REDACTED] in the Philippines, a subsidiary of [REDACTED] in Hawaii, and has been an ordained minister since May 24, 1997, and has been carrying her vocation continuously to the present.

The letter further states that regardless of the variation in their names, "our fundamental faith/beliefs, fellowship and practices identify us as distinctly Pentecostal."

The petitioner also submitted a statement, dated November 26, 2002, from the [REDACTED] in the Philippines, Inc., certifying that the beneficiary "served the [REDACTED] ministries, missions program and activities in the Philippines from 1995 - 1999 and is now an ordained minister of the [REDACTED] in the Philippines incorporated." This letter does not provide information concerning her schedule, duties, or remuneration, nor does it indicate its affiliation with a particular denomination. The petitioner also submitted a "Certificate of Ordination" dated May 24, 1997, by authority and order of the [REDACTED] at Lunsad, Binangonan Rizal, Philippines. The record does not contain documentation regarding the requirements that must be met in order to become ordained, nor does it contain information indicating how the beneficiary has met the standards. The issuance of a document entitled "Certificate of Ordination" by a religious organization does not conclusively establish that an alien qualifies as a minister for immigration purposes. *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978).

It is noted that in the initial petition, in a letter dated April 25, 2001, the petitioner stated that the beneficiary:

[E]ntered Bethel Bible College in Cabao, Quezon City, Philippines in 1992 and graduated with a Bachelor of Christian Ministry with a major in Pastoral Theology in 1994. She also studied at Bethel Bible college (Valenzuela City, Philippines) from 1994 to 1998 and graduated with a Bachelor of Christian Ministry with a Major in Christian Education.

The dates of study in Valenzuela City are in conflict with the timeframe of the beneficiary's ordination in Lunsad, Binangonan Rizal, Philippines. The petitioner has not satisfactorily explained how the beneficiary achieved her studies at Bethel Bible College in Valenzuela City from 1994-1998, while also working for a ministry that is part of a different Bible school, the Door of Faith Church and Bible School in Lunsad, Binangonan Rizal, from 1995-1999.

In addition, the record contains inconsistent statements regarding the beneficiary's religious work in the United States from November 23, 1999 until July 12, 2001. In the initial application, in the statement "Christian Ministry Verification", dated April 26, 2001, the petitioner writes that the beneficiary "has been serving in Christian Ministry with the Filipino Assemblies of the First-Born denomination since 1989." The petitioner's letter dated April 25, 2001, however, conflicts with this statement and is internally inconsistent. This letter states that the beneficiary "has been affiliated with Filipino Assemblies of the First-Born, Inc. churches since 1999 [notation made in ink on letter]," and later states "Ms. Castillo has been serving as a Minister for the Filipino Assemblies of the First-Born, Inc. since 1992." This statement further conflicts with the information provided on the ordination certificate.

On appeal, the petitioner states that the beneficiary "has been living with her Aunt and Uncle. She is being remunerated through free-will offerings and love-gifts of the congregation, as well as, receiving a reimbursable expense allowance for expenses incurred for ministry." The record does not document these assertions as to the dates or amounts of remuneration. This statement also is in conflict with the petitioner's earlier statement of April 4, 2002, which states that the beneficiary's "support has come entirely from the Philippines. She has not received any salary from any church or from any other place of employment in the U.S. She has served churches in Brunei, Malaysia, Hong Kong, as well as in the Philippines and here in the U.S., and in all places, her income has come from the Philippines ... Rev. Castillo was supported entirely

by her church denomination in the Philippines." The record, however, fails to contain any documentation to establish that the beneficiary received any remuneration from a church in the Philippines. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Discrepancies encountered in the evidence presented call into question the petitioner's ability to document the requirements under the statute and regulations. The discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

On appeal, the petitioner writes, "Her services in the Philippines fully qualifies to be licensed [sic] by the Filipino Assemblies of the First-Born, Inc." The petitioner indicates that the beneficiary's License to Preach authorized by The Filipino Assemblies of the First-Born, Inc., is valid until July 2003. The card, dated July 31, 2002, indicates that it is valid for one calendar year. The initial petition also included a similar "License to Preach" dated July 31, 2000, also valid for one year. The record does not document the requirements necessary for renewal of this licensure. Moreover, the record does not reflect by what authority the beneficiary was permitted to perform the duties as a "Minister" from the time of her arrival in November 1999, until she received an authorized "License to Preach" dated July 31, 2000.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately

preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he or she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com. 1964).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he or she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation, who, in accordance with their vocation, live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

In this case, the record reflects a lack of documentation as well as unexplained inconsistencies that call into question the beneficiary's qualifications and her work as a minister during the requisite two-year period preceding the filing of the petition. In light of the discussion above, the petitioner has not established that the beneficiary was continuously performing the duties of a

qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. Therefore, the petition must be denied for this reason.

The second issue raised by the director to be addressed in these proceedings is whether the petitioner established that the beneficiary is qualified to engage in a religious vocation or occupation. As discussed earlier, the dates of the beneficiary's religious study in Valenzuela City are in conflict with the timeframe of her ordination in Lunsad, Binangonan Rizal, Philippines. The petitioner has not satisfactorily explained how the beneficiary achieved her studies at Bethel Bible College in Valenzuela City from 1994-1998, while also working for a ministry that is part of a different Bible school, the Door of Faith Church and Bible School in Lunsad, Binangonan Rizal from 1995-1999. The record does not reflect by what authority the beneficiary was permitted to perform the duties as a "Minister" from the time of her arrival in the United States in November 1999, until she received an authorized "License to Preach" dated July 31, 2000. The record does not contain documentation regarding the requirements that must be met in order to become ordained, and show that the beneficiary has met the standards.

In light of these issues, the petitioner also did not establish that the beneficiary is qualified to engage in a religious vocation or occupation, as an ordained minister, and the petition must be denied for this reason.

Beyond the decision of the director, a petitioner must provide evidence that it has the ability to pay the beneficiary the proffered wage, as required in 8 C.F.R. § 204.5(g)(2).

The record reflects that the petitioner has not paid a salary to the beneficiary, and amounts and regularity of "free-will gifts" and "love-gifts" are not documented. The petitioner submitted an unaudited "Summary Report 1/1/00 Through 12/31/00," which lists "Total Income" as \$197,143.57, and "Total Expenses" as \$177,007.41, with "Balance Forward" and income totaling \$26,959.58. The petitioner has not submitted annual reports, federal tax returns, or audited financial statements that would illustrate its assets and liabilities and permit a conclusive determination as to the petitioner's ability to pay the proffered wage since the filing date of the petition.

Another issue to be discussed that was not addressed by the director, is whether the petitioner submitted sufficient evidence

to establish that it is a bona fide nonprofit religious organization.

8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

- (3) *Initial evidence.* Unless otherwise specified, 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
    - (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations..

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The record contains a copy of the IRS letter of recognition dated July 2, 1986, verifying that the "Filipino Assemblies of the Firstborn Inc." was granted tax-exempt status as a religious organization on July 29, 1937. The record also contains an IRS letter dated May 27, 1980, recognizing the "twelve affiliated

churches" whose names were provided to the IRS "on the lists submitted September 29, 1959." In response to the director's request for evidence to establish that the petitioner, the Faith Gospel Center, is recognized as tax-exempt, the petitioner submitted an undated list, "Filipino Assemblies of the First Born, Inc., California Member Churches." The list includes 14 churches, including the petitioner as one of the churches.

The record does not establish that the petitioner was among the original 12 churches submitted on the September 1959 list and subsequently recognized by the IRS as affiliate churches of the Filipino Assemblies of the Firstborn, Inc. The record does not contain evidence that the IRS was informed of the addition of the petitioner, or if the petitioner was added as a subordinate church at a later date. The record does not include a letter of recognition issued by the IRS to Faith Gospel Center, nor does it include a listing, other than the petitioner's own, of the church's recognition as an approved subordinate operating under the umbrella of the group granted tax exempt status in 1937, or its subordinates. The record does not include a completed IRS Form 1023, the Schedule A supplement which applies to churches, or a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization. The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

In reviewing an immigrant visa petition, CIS 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.