

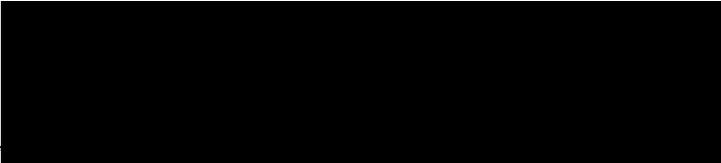
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Citizenship and Immigration Services

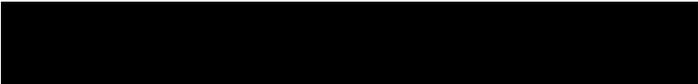
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536



File:  Office: NEBRASKA SERVICE CENTER

Date: **NOV 19 2003**

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant 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

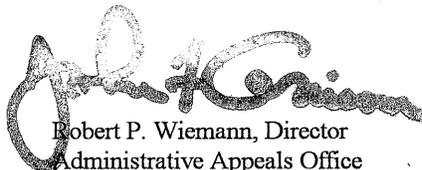
INSTRUCTIONS:

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.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Romanian Pentecostal church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a youth minister. The director determined that the petitioner had not established: (1) that the beneficiary had the requisite two years of continuous work experience as a youth minister immediately preceding the filing date of the petition; (2) that the beneficiary was a member of the petitioner's denomination throughout the same two-year period; or (3) its ability to pay the beneficiary's proffered wage.

On appeal, the petitioner states that a brief is forthcoming within 30 days. To date, over 17 months after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands. The petitioner's appellate submission consists of statements from the petitioner's senior pastor, the beneficiary, and other witnesses.

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 regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that the "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 9, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a youth minister throughout the two-year period immediately preceding that date.

The petitioner entered the United States on March 8, 1999, under a B-1/B-2 visa with the annotation "TRAINING AT GOOD NEWS RADIO 2 MONTHS." This training period would have ended in May 1999, less than two years before the filing of the petition. The beneficiary does not indicate that he cut short this training. Rather he states that traveled to the United States to "visit an American friend and a Christian Radio Station" and joined the petitioning church "[a]fter that visit." The record contains nothing from Good News Radio or any official thereof to clarify the extent, if any, to which the beneficiary actually participated in the training that was his sole basis for admission as a nonimmigrant.

states, in a letter dated April 5, 2001:

A year ago I worked with [the beneficiary] on a CD-ROM project for the Youth Convention held at [the petitioning church]. He has also worked with me as volunteer doing some digital work. . . .

As Coordinator of Digital Projects at the Assemblies of God Archives, I know that I could use somebody like [the beneficiary] in converting our vast collection of audio tapes to a digital format.

The director requested further information to establish that the beneficiary has been performing the duties of a youth minister continuously throughout the two-year qualifying period. In response, the petitioner's senior pastor states "on May the 9th, 1999, [the beneficiary] started to serve at [the petitioning church] as our Youth Minister." Thus, the beneficiary did not begin performing these duties for the petitioner until one month of the qualifying period had elapsed.

The petitioner has submitted a letter from Rev. Tudor S. Peshel, senior pastor of Romanian Baptist Church of Canton in Canton, Ohio. Rev. states that from April 9 through April 30, 1999, the beneficiary "was serving our congregation . . . by assisting [R]omanian members of the clergy staff in conducting worship services; teaching in the Sunday School, preaching the Word, and evangelizing; as [the beneficiary] was doing in Romania till he came [to the] United States." Rev. does not indicate that the beneficiary was a youth pastor at Romanian Baptist Church. Rev. assertion that his duties at Romanian Baptist Church were similar to his duties in Romania is not consistent with the earlier claim that the beneficiary worked in religious broadcasting before he arrived in the United States.

We note that the beneficiary, in his statement submitted with the initial filing, made no mention of any church work in the United States prior to working with the petitioner. As noted above, he indicated only that he came to the United States to "visit an American friend and a Christian Radio station. . . . After that visit, [the petitioner] expressed its need for a Youth Pastor and I accepted the offer." Nothing in the initial submission contained any mention of this newly-claimed employment during April 1999.

Upon examination of the evidence, the director concluded "[i]t does not appear that the beneficiary was continuously performing the duties of a youth minister for the two-year period immediately preceding the filing of this petition."

On appeal, Pastor Druhora states:

The Beneficiary came to [the] United States as a **full time minister** of the Romanian Pentecostal Church in Romania, the same Pentecostal Denomination [as the petitioner] here in the US.

He came as a private citizen, on a B1 – Visitor Visa **during his time of legal vacation** from his ministerial duties in Romania.

During these two months of his vacation, **that he was legally entitled to**, he chooses [sic] to have some basic training at the Good News Radio.

All this time, he was a full time minister within the Pentecostal Denomination in Romania.

(Emphasis in original.) The petitioner submits a new declaration by the beneficiary, who repeats the claim that he was on vacation when he arrived in the United States. The record contains no evidence from the beneficiary's employer in Romania to confirm this claim.

The beneficiary states that he traveled to the United States "to assist the Good News Radio staff doing fund-raising. My own activities consisted in preaching in American churches and speaking to the American Youth (see copy of e-mail letter of [redacted] the Program Director of Good News Radio). [redacted] in his message, does not identify himself as program director, and indeed the message contains no mention whatsoever of Good News Radio, radio broadcasting in general, fund-raising, or any training. Mr. [redacted] states "I can verify that [the beneficiary] worked . . . in the capacity of a church speaker. He addressed students at a Christian school as well as speaking to teenagers in churches." Mr. [redacted] then lists four churches in the vicinity of Bangor, Maine, where the beneficiary purportedly spoke between May 2 and May 5, 1999. These speaking engagements cover no more than four days during the qualifying period.

Regarding the beneficiary's activities during April and May 1999, the letters submitted by the petitioner indicate that he was at churches in Ohio from April 9 through 30, in Maine from May 2 through 5, and in Missouri from May 9 onward. The beneficiary maintains that he "came over for 'TRAINING AT

GOOD NEWS RADIO 2 MONTHS,” as listed on his visa, but he fails to explain why this training supposedly entailed speaking at churches in three different states during that two-month period. The record continues to contain nothing from anyone who claims to be an official of Good News Radio, to shed any further light on this matter.

The record contains several inconsistent and/or unsubstantiated claims regarding the beneficiary’s activities subsequent to his arrival in the United States. We concur with the director that the petitioner has not adequately demonstrated that the beneficiary was continuously engaged as a youth pastor throughout the 1999-2001 qualifying period.

The second issue raised by the director concerns qualifying membership in the petitioner’s religious denomination. Section 101(a)(27)(C)(i) of the Act requires that the beneficiary, “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.”

The regulation at 8 C.F.R. § 204.5(m)(1) echoes this requirement. 8 C.F.R. § 204.5(m)(2) defines a “religious denomination” as “a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.”

In a letter dated April 1, 2001, [REDACTED] a minister at Central Assembly of God in Springfield, Missouri, states that the petitioning church “is in the process of getting affiliated with the Assemblies of God” and changing its name accordingly. The record does not demonstrate the petitioner’s denominational affiliation throughout the two-year period up to and including the petition’s filing date. If the beneficiary seeks employment as a youth minister in the Assemblies of God denomination, then by law and by regulation he must have been a member of the Assemblies of God throughout the two-year qualifying period. If, at the time of filing, the petitioning church was still in transition to that denomination, then it necessarily follows that the petitioner, and its members including the beneficiary, were not members of the Assemblies of God during the qualifying period. Mr. [REDACTED] contention that the practices and doctrines of the petitioning church were already similar to those of the Assemblies of God does not establish that the petitioner was, in fact, a member church of that denomination.

Rev. [REDACTED] has stated that the beneficiary attended and worked at Romanian Baptist Church of Canton during April 1999. Because the Baptist church and the Assemblies of God are two distinct denominations, Rev. [REDACTED] letter casts further doubt on the beneficiary’s continuous membership in one religious denomination throughout the entire qualifying period.

The director found “[t]he petitioner has not submitted any documentation showing a formal affiliation between the Romanian Pentecostal denomination and the Romanian Baptist denomination or any documentation showing that it is included in that denomination’s group tax exemption.”

On appeal, the beneficiary states:

Serving that Romanian Baptist Church of Canton, OH, was, basically, the same thing as serving the [petitioning] Romanian Pentecostal Church in Springfield, MO. Radio Voice of the Gospel in Romania is a non-denominational Christian ministry that belongs equally to all members of the Evangelical Alliance (Baptist, Pentecostals, Bretherens [sic]). There, I have learned, for 5 years, to serve not only the believers of my very own denomination but also those belonging to the other close denominations. A real religious worker never serves only his own denomination. . . . But again, it was during my vacation time.

The beneficiary's arguments are not persuasive. The clear language of the statute, repeated in the regulations, requires consistent and continuous membership in, and service to, the same religious denomination throughout the two-year qualifying period. The protest that the beneficiary was on vacation while preaching at a Baptist church does not diminish or nullify this statutory requirement.

The petitioner submits a new letter from Rev. [REDACTED] who states that the beneficiary only attended Romanian Baptist Church of Canton because it was "the closest Romanian Evangelical church" to where the beneficiary was living at the time. Rev. [REDACTED] states "[b]ased on the formal affiliation of Neoprottestant churches (denominations), in Romania, all Baptist, Brethren and Pentecostal churches were united in the Evangelical's Alliance – based upon our common doctrines, membership accepted from one another, and even 85% of our sacraments are the same." Rev. [REDACTED] offers no proof for this claim, but even if he did, it remains that the Baptist and Pentecostal churches are separate denominations with doctrinal differences. That these differences may be relatively minor is beside the point. The statute and regulations do not state that membership in a different denomination is acceptable provided that the two denominations share a certain percentage of sacraments or other practices. The Evangelical Alliance may be a multid denominational religious organization in Romania, but the beneficiary did not work directly for the Alliance, and the proffered position is with a specific church rather than with the Alliance as a whole.

Further complicating matters, as noted before [REDACTED] claim that the petitioning church is in the process of joining the Assemblies of God appears to introduce a third denomination into the proceeding. If the petitioner intends to employ the beneficiary as a youth minister in the Assemblies of God denomination, then by law the beneficiary must have worked for two years in that capacity, for that denomination, throughout the two-year period immediately preceding the filing of the petition.

The final issue raised by the director concerns the petitioner's ability to pay the beneficiary's proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

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. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

In a letter submitted with the petition, Pastor [REDACTED] states that the church has been "able to support [the beneficiary's] ministry with a monthly donation of 1200 USD. Once the legal work permit [is] granted, the church could provide [him] with a regular salary higher than the above mentioned donation."

The director requested evidence that the beneficiary had received the compensation claimed, as well as evidence of the petitioner's ability to pay a specified salary to the beneficiary from the filing date onward. In response, the petitioner has submitted a list of checks and cash donations purportedly presented to the beneficiary from May 16, 1999 through April 6, 2001. The petitioner submits a copy of one cancelled check for \$700, dated March 24, 2000. Pastor [REDACTED] asserts that the petitioner intends to pay the beneficiary \$1,600 per month, but he provides no documentation of the petitioner's ability to pay this wage.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation.

In denying the petition, the director stated that the petitioner has not submitted any of the required types of evidence of its ability to pay the beneficiary's salary. The director also noted that the petitioner has not established that it employs at least 100 people, and therefore the petitioner's written assurance of its ability to pay cannot suffice.

The director noted that the beneficiary had subsisted on donations from the congregation, and that the petitioner has not established its ability to pay the beneficiary an adequate salary. On appeal, Rev. [REDACTED] repeats the assertion that the beneficiary "was offered a full time, salary paid position," but the petitioner does not submit any documentary evidence to establish its ability to pay. The sum total of the petitioner's contemporaneous financial documentation amounts to a copy of one check for \$700. A table of past payments, compiled after the fact, is not contemporaneous, amounts to a claim rather than actual documentary evidence, and does not conform to the plainly-worded documentary requirements listed at 8 C.F.R. § 204.5(g)(2).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.