

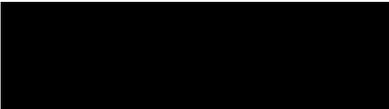
U.S. Department of Homeland Security

Citizenship and Immigration Services

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



File: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date: NOV 21 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification 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 pastor of Freedom Youth Revival Everywhere (FYRE) Ministries. The director determined that the petitioner had failed to establish that: (1) the prospective employer is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 as it pertains to religious organizations; (2) the petitioner's position qualifies under the pertinent regulations.

On appeal, the petitioner submits copies of letters and documents, some previously submitted.

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)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit 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 (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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner must either provide verification of the church's individual exemption from the Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS. Such documentation to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 includes a completed Form 1023, a completed Schedule A attachment, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

Because the petitioner's initial submission did not address the tax exemption issue, the director instructed the petitioner to submit relevant evidence. In response, the petitioner has submitted a copy of State of California Form SO-100, Statement by Domestic Nonprofit Corporation, identifying the petitioner as chief executive officer of FYRE Ministries. The street address of the corporation's "principal executive office in California" is the petitioner's home address. The articles of incorporation for [REDACTED] state that the corporation "is organized and operated exclusively for religious purposes within the meaning of Section 501(c)(3), Internal Revenue Code."

The articles of incorporation include the required clause showing disposition of assets, but the materials submitted by the petitioner lacked the other documentation required by 8 C.F.R. § 204.5(m)(3)(i). Accordingly, the director denied the petition, in part based on the petitioner's failure to establish the required tax-exempt status.

On appeal, the petitioner and several officials of "the [REDACTED]" assert that the petitioner's [REDACTED] "is affiliated with [REDACTED]" and that its board of directors includes the pastors of [REDACTED]. The record contains no formal documentation of this connection; FYRE Ministries' articles of incorporation contain no mention of the [REDACTED]. The inclusion of [REDACTED] pastors on [REDACTED]' board of directors would not establish any formal affiliation between the two entities or establish the latter's tax-exempt status. The materials submitted on appeal do not establish the federal tax-exempt status of FYRE Ministries (or, for that matter, [REDACTED]).

The other issue raised by the director in this proceeding is whether the petitioner holds a qualifying position. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States.

The regulations at 8 C.F.R. § 204.5(m)(2) contain the following pertinent definition:

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.

While the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

An unsigned and undated letter, on FYRE Ministries letterhead, indicates that the petitioner is "an ordained minister [authorized] to perform religious functions." The letter lists the beneficiary's duties: "conducting ministry services, preaching, teaching, discipling, conducting marriages, funerals, baptisms, communion, baby dedications, prayer, counselling and itinerant duties with associated religious organizations, including but not exclusive to the Vineyard churches in America" including the petitioner's home church, Valley Vineyard. The letter indicates that the beneficiary is also involved in the volunteer chaplaincy program at Olive Crest, "a state funded treatment facility for young people." Given that the petitioner is the founder and chief executive officer of FYRE Ministries, this letter appears to be a declaration from the petitioner himself.

██████████ senior pastor at Valley Vineyard Christian Fellowship, states that the petitioner and his spouse "have functioned as ministers of the Gospel to the church and community" since August 2001, and "have been compensated for their service . . . with groceries and utility aid when needed." Two chaplains of Olive Crest affirm, in a joint letter, that the petitioner and his spouse "have been very effective and dedicated volunteers in our Chaplaincy Program." The petitioner also submits various letters and messages attesting to his earlier pastoral work with other churches, usually on a volunteer basis or compensated only with food and supplies. None of these letters refers to the petitioner as an "ordained minister."

To explain how they supported themselves during this time, the petitioner and his spouse assert in a joint statement that the petitioner's spouse accepted a job conducting promotional work for a New Zealand-based beef company. The petitioner and his spouse state "[i]n Sept 2000 we set up Zedu Promotions and put all our promotion income through the business and filed a tax return under Zedu Promotions. . . . In the entire 2 year period we earned \$45,344.00, with \$34,927.00 coming from New Zealand." The petitioner and his spouse refer to several promotional products that "we" undertook, indicating the petitioner's involvement with this entirely secular promotional enterprise. The couple filed joint income tax returns for 2000 and 2001, claiming \$1,317 in business income in 2000 and a loss of \$720 in 2001, and identifying their occupations as "self-employed."

The director stated that the petitioner failed to establish “that the duties within the religious capacity receive any specialization, licenses, certificates, ordination papers, and diploma.” On appeal, the petitioner submits a copy of a “Certificate of Ordination,” dated September 5, 2002, which indicates on its face that the petitioner was not an ordained minister at the time of filing. 8 C.F.R. § 204.5(m)(1) requires that an alien seeking classification as a special immigrant religious worker must have worked in the same occupation or vocation continuously throughout the two-year period immediately prior to the petition’s filing date, in this instance April 22, 2002.

The aforementioned certificate, a “form” document with specific information printed or written into blank spaces, indicates that the petitioner was ordained “by order of the Board of Directors of Fyre Ministries,” which is the petitioner’s own corporation. There are three partially legible signatures of board members. One of these signatures appears to be that of the petitioner’s spouse. There is no indication that FYRE Ministries is formally affiliated with any established religious denomination, or that any larger religious authority has recognized the petitioner’s ordination. While the petitioner claims to have conducted weddings, baptisms, and other functions of ordained clergy, the record contains no contemporaneous evidence of such service such as marriage certificates or church documents bearing his name.

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/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). The present statute requires that an alien seeking to enter as a minister must be *solely* engaged in that vocation, a requirement reflected in the regulations at 8 C.F.R. § 204.5(m)(1).

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

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/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 instance, the petitioner has indicated that his primary means of support has been a marketing/promotional company he founded with his spouse. The repeated use of the plural pronoun "we" in describing this company's work indicates that the petitioner has been involved in operating this company, and therefore he has not been solely engaged in the vocation of a minister, even if we were to find that his religious work qualifies as ministerial at all.

8 C.F.R. § 204.5(m)(4) requires information regarding the alien's projected remuneration, and 8 C.F.R. § 204.5(g)(2) requires specific types of evidence to establish the prospective employer's ability to pay the alien's proffered wage. In this instance, the record is silent as to what the petitioner's salary will be, and it contains nothing to demonstrate FYRE Ministries' ability to pay that salary. The unproven claim that FYRE Ministries is affiliated with the Vineyard Church is without effect here because the record also lacks evidence of that entity's ability to pay. The record offers only a vague description of the petitioner's proposed employment situation. At best, the record portrays the petitioner's recent religious work as part-time, itinerant work, with no indication of the prospects of salaried, full-time employment with any tax-exempt religious body with the documented ability to pay that salary.

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.