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

Citizenship and Immigration Services

*CU*

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

[REDACTED]

File: [REDACTED] Office: Texas Service Center

Date: NOV 26 2003

IN RE: Petitioner:

Beneficiary:

[REDACTED]

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:

[REDACTED]

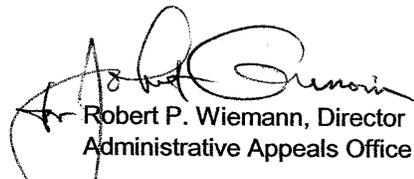
**INSTRUCTIONS:**

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**DISCUSSION:** The approval of the immigrant visa petition was revoked by the Acting Director, Texas Service Center and is now before the Administrative Appeals Office on appeal.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 him as its pastor.

The Form I-360 petition was filed on July 3, 1995 and was approved on January 11, 1996 by the Director, Texas Service Center. Upon further review during the adjustment of status process, it was determined by the Bureau that the beneficiary was not eligible for the benefit sought. The director determined that the beneficiary was engaged in supplemental employment and was dependent upon the selling of vitamins for financial support.

The director properly served the petitioner with a notice of intent to revoke approval of the petition on August 23, 2000, and afforded the petitioner an opportunity to rebut the adverse determination. After consideration of the petitioner's response, it was determined that the grounds of ineligibility had not been overcome. In a decision dated October 3, 2001, the director revoked approval pursuant to 8 C.F.R. § 205.2. The petitioner, by and through counsel, has appealed that decision.

On appeal, counsel for the petitioner submitted a brief arguing that the sale of vitamins is a part of the Gnostic Religion and all of the money derived from the sale of vitamins and herbs was given to the Gnostic Church.

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 petitioner is a nonprofit organization. The beneficiary is a native and citizen of Mexico who was first admitted to the United States on July 3, 1989 in B-2 classification as a visitor.

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

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

The petitioner in this matter is described as a nonprofit church (organization) established to promote the "religious, social, and educational upliftment" of members of the Gnostic faith. In response to the Notice of Intent to revoke the petitioner concedes that he sells vitamins, stating that "the use of vitamins is an important part of the Gnostic religion."

On appeal, counsel argued that:

The issue in this case is whether the sale of natural vitamins and herbs are a duty of the Gnostic minister. Clearly, the sale of natural vitamins and herbs is an integral aspect of the Gnostic religion, and a fundamental duty of the Gnostic minister. Followers of the Gnostic faith rely upon herbs and other derivatives from nature. They believe that herbs and natural derivatives (vitamins) can heal physical and mental ailments, and bring followers closer to the divine. However, different herbs and natural derivatives from nature have differing effects on a person. Thus, it is very important for a Gnostic minister, who understands how different herbs and natural derivatives affect people, to ensure that the correct herb or natural vitamin is used.

Moreover, the profits gained from the sale of herbs and natural vitamins is the Gnostic Church's, not [the beneficiary's] own personal wealth. Every cent earned from the sale of the herbs and natural vitamins is provided to the church. Accordingly, [the beneficiary]

was not reliant upon the sale of vitamins for financial support, but was solely engaged in his ministry.

Counsel's argument is not persuasive and raises significant questions regarding both the tax exempt status of the petitioner and the beneficiary's employment.

The petitioner must establish that the beneficiary is qualified as a minister as defined in these proceedings. The petitioner has not explained the standards required to be recognized as a minister in the denomination or shown that the beneficiary has satisfied such standards. Second, simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister.

The petitioner has submitted no evidence and has therefore not demonstrated that selling herbs and vitamins is a part of the religious liturgy of the Gnostic faith. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has not established that, in the selling herbs and vitamins, the beneficiary was solely carrying on the vocation of minister. For this reason as well, the petition may not be approved.

The employer must also demonstrate its ability to pay the proffered wage.

Regulations at 8 C.F.R. § 204.5(g)(2) state, 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 record of offerings, bank statements, annual reports, federal tax returns, audited financial statements or any other evidence of its ability to pay. Rather, it must be concluded that the beneficiary is largely dependent upon the sale of herbs and vitamins for his subsistence. Therefore, the petitioner has not established the ability to pay the proffered wage. For this additional reason, 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.