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Citizenship and Immigration Services

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



**NOV 26 2003**

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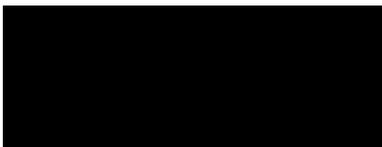
Date:

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 "religious education director/missionary."

The director determined that the petitioner had failed to establish that: the offered position constituted a qualifying religious occupation; and that the beneficiary is qualified for the position within the religious organization.

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, 2003, 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, 2003, 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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

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 first issue raised by the director is whether the petitioner has established that the offered position qualifies as a religious occupation.

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.

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 is traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning religious organization.

The petitioner describes the duties of the offered position as follows:

- (1) . . . planning and teaching at Sunday-school program and other religious programs for parish members (10 hrs. per week);
- (2) directing, planning, preparing, and running [B]ible study groups at the parish for adults, college groups, high-school groups, and elementary school groups, and kindergarten (10 hours per week);
- (3) supervising and training religious teachers regarding subjects including Bible, religious teaching methodology, pastoral counseling, and youth education (5 hours per week);
- (4) directing, planning, preparing and running [B]ible study groups at the church members' homes (5 hour[s] per week);
- (5) directing, planning, organizing, and teaching at special religious programs for youth members such as Summer/Winter vacation school and revival meetings (average 5 hours per week) [.]

The petitioner states that the minimum requirements for the job are two years of full-time education in theology and two years of full-time experience as a religious education director and/or evangelist, in addition to a clear demonstration of Christian spirituality. The petitioner submitted an undated copy of its by-laws. This document, which identifies the position as "Education Director/Evangelist," states that the holder of the position "must have completed at least [a] full 2 year-course in college-level seminary plus 2 years of full-time work experience as an Education Director/Evangelist." The duties of the position are described as follows:

1. Oversees the general functioning of the educational and the spiritual program.

2. Plans, organizes and directs the material according to the needs of the educative division.
3. Supervises the instructional staff and determines teaching priorities.

The record contains a letter dated August 10, 2000, from Rev. Sang Ki Lee, Secretary of The American Presbytery in U.S.A. of the Korean Presbyterian Church. Rev. Lee states:

In our denomination, Assistant Pastor a/k/a Evangelist is considered to be [a] traditional religious occupation. . .

That the functions of Assistant Pastor a/k/a Evangelist are directly related to the religious creed of the Christian denomination.

That Assistant Pastor a/k/a Evangelists are required to have specific knowledge and experience of the Christian Church's teachings, tradition, Bible, and Theology in order to function effectively within the contest of our Christian services and education.

That their duties normally includes [sic] but are not limited to: assisting the pastor in conducting worship services; providing spiritual guidance to church members; planning and administering Sunday services for children and youth members including giving sermons; running Bible study groups; visiting the church members for religious counseling and running Bible studies. In order to perform those duties, most churches in our denomination generally hire a full-time and permanent Assistant Pastor a/k/a/ Evangelist.

That it is the general requirement of our denomination for the Assistant Pastor a/k/a/ Evangelist to have at least two years of full-time education in Theology or Bible plus two years of more [sic] experience as an Assistant Pastor or in the closely related position.

The petitioner has not submitted any evidence to establish that the duties of the proffered position are directly related to the religious creed or beliefs of the denomination, nor has the petitioner submitted any evidence to demonstrate that the position is defined and recognized by the governing body of the denomination. Rev. Lee described the position of "Assistant Pastor/Evangelist" within the Korean Presbyterian denomination in his letter. The duties of that position do not correspond to the duties of the proffered position of "Religious Education

Director/Missionary." Therefore, Rev. Lee's statements are not pertinent to the question of whether the proffered position is a traditional religious function within the denomination. Finally, the petitioner has not submitted any evidence to establish that the position is traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning church.

Counsel asserts that the AAO has already determined that the proffered position is a qualifying religious vocation or occupation and the beneficiary qualifies to perform services in the position, since CIS has previously approved three nonimmigrant R-1 religious worker petitions filed by the petitioner on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals, and this record of proceeding does not contain a copy of the previous petitions and their supporting documentation. If those petitions were approved based on evidence that is similar to the evidence contained in this record of proceeding, however, the approval of those petitions may have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied* 485 U.S. 1008 (1988). Additionally, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D.La.).

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 for this reason the appeal must be dismissed.

The second issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary qualifies for the position within the religious organization.

Pursuant to 8 C.F.R. § 204.5(m)(3)(ii)(D), a special immigrant religious worker petition must be accompanied by a letter from an authorized official of the religious organization in the United States that establishes that the alien is qualified in the religious vocation or occupation. The petitioner has not submitted such a letter. Furthermore, although the petitioner has submitted evidence to show that the beneficiary holds a two-year degree in women's pastoral ministry from a Presbyterian seminary in Korea, the petitioner has not submitted evidence to show that this degree qualifies her for the position of "religious education director/missionary" within the religious organization.

It should also be noted for the record that, based on the petitioner's inability to provide sufficient documentation to

fulfill the evidentiary requirements for classification as a special immigrant religious worker, the beneficiary does not appear to be entitled to her current classification as a nonimmigrant R-1 religious worker. A mere showing that the beneficiary has been in the United States in nonimmigrant R-1 status since April 1, 1997, does not in itself establish that she is qualified for a religious worker position within the religious organization. Therefore, the petitioner has not established that the beneficiary is qualified for the position within the religious organization, and the petition must also be denied for this reason.

Beyond the director's decision, the petitioner has not established that the beneficiary was engaged continuously in a qualifying religious vocation or occupation during the two-year period immediately preceding the filing date of the petition. As the petition will be dismissed on the grounds discussed, this issue will not be addressed further in this decision.

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.