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U.S. Department of Homeland Security

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



File

Office: VERMONT SERVICE CENTER

Date: SEP 12 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:

PUBLIC COPY

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 immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant minister 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 a minister.

The director denied the petition, finding that the petitioner failed to establish that it qualified as a bona fide nonprofit religious organization. The director further found that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director determined that the petitioner failed to establish that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel asserts that the beneficiary is an ordained full-time minister who has worked for the last two years in the capacity of minister/pastor of the petitioning church and that the petitioning church is a qualifying tax-exempt organization. Counsel failed to submit a completed Form G-28, Notice of Entry of Appearance signed by the petitioner, so the CIS will not recognize counsel as the petitioner's representative and notice of this decision will be sent to the petitioner alone. 8 C.F.R. § 292.4.

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).

The petitioner in this matter is an evangelical Pentecostal church with headquarters located in Lagos, Nigeria. The petitioning church was incorporated in the United States in 1988. The beneficiary is a 52-year old native and citizen of Nigeria who last entered the United States as a B-2 nonimmigrant visitor for pleasure on January 25, 1992.

The first issue to be addressed in this proceeding is whether the petitioner established that it is a qualifying religious organization as defined in the pertinent regulation.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that 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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

In addressing this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated April 19, 1993, reflecting that the Deeper Life Bible Church located at 431 Chauncey Street, Brooklyn, New York, was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). On the petition, the petitioner listed its address as [REDACTED]

On appeal, the petitioner submitted a letter from the IRS dated January 22, 1998, indicating that the Deeper Life Bible Church located in Roxbury, Massachusetts, was granted tax-exempt status.

In review, given the discrepancies noted above, the petitioner has failed to establish that it has tax-exempt status.

The next issue to be addressed in this proceeding is whether the petitioner established that the beneficiary was continuously performing the religious vocation of a minister for at least the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

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.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least April 30, 1999.

In this case, a pastor of the petitioning church stated that:

[The beneficiary] has been employed as a Local Pastor of our church in Bridgeport Connecticut since his ordination on September 15, 1996. He has since been performing all religious duties states by the byelaws of our church.

[Sic.] In a separate letter, the same pastor wrote that the beneficiary had been assigned to do "voluntary pastoral services and supervision of our Bridgeport, Connecticut Church."

The director determined that the petitioner failed to establish that the beneficiary had two full years of experience in a religious vocation in the absence of W-2's and copies of the beneficiary's tax returns. The AAO concurs.

Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating evidence such as certified tax documents, the Bureau is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

The third issue to be evaluated in this proceeding is whether the petitioner demonstrated its ability to pay the proffered wage.

8 C.F.R. § 204.5(g)(2) states, 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.

In this case, the petitioning church has filed petitions for three alien workers. The petitioner indicated that it had offered to pay the beneficiary \$25,000 a year for his services. The petitioner submitted unaudited financial statements. The petitioner failed to establish its ability to pay, in part, because it failed to provide evidence of this ability in the required format.

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.