

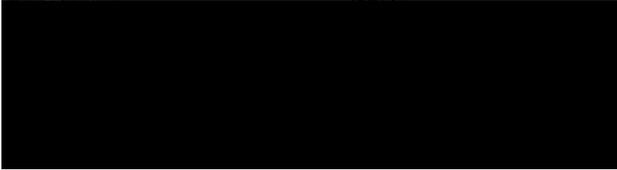


C1

U.S. Department of Homeland Security
Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



File: EAC-01-138-51760

Office: Vermont Service Center

Date: **SEP 30 2003**

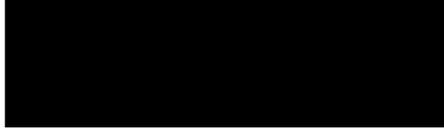
IN RE: Petitioner:

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

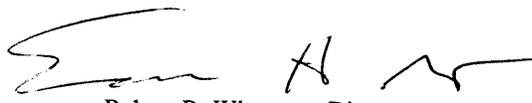
INSTRUCTIONS:

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 which runs a Christian academy. 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 an Assistant Director of Religious Education at an annual salary of \$10,400 per year.

The director denied the petition on the grounds that the petitioner failed to establish that the beneficiary had two years of continuous experience in a religious occupation.

On appeal, counsel for the petitioner submits a written brief and additional evidence. Counsel maintains that the beneficiary has been employed full-time by the petitioner during the qualifying period.

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 is a church affiliated with the United Pentecostal Church. The beneficiary is a native and citizen of Trinidad who was last entered the United States on October 1, 1989 in an undisclosed manner. The record indicates that the beneficiary is currently in deportation proceedings.

The issue to be examined in this proceeding is whether the petitioner has established that the beneficiary had two years of continuous experience in a religious occupation.

Regulations at 8 C.F.R. § 204.5(m)(3) state, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

*

*

*

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

Regulations at 8 C.F.R. § 204.5(m)(2) state, in pertinent part, that:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

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 and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for two years preceding filing. The regulations are silent on the question of volunteer work satisfying the requirement. The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, CIS interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

The director found that the documentation submitted was insufficient to demonstrate that the beneficiary had been engaged in full-time religious employment during the two-year qualifying period. The director noted that the petitioner had submitted an employee contract for the beneficiary dated September 8, 1998, and, in accordance with a later request for additional documentation, copies of time sheets dating from September 8, 1997, to January 18, 2002. The director noted that no payroll documentation of any kind had been submitted such as Form W-2 (Wage and Tax Statements). The director, concluded, therefore, that the petitioner had failed to demonstrate that the beneficiary had the required two years of experience in the religious occupation.

In examining the employee contract of September 8, 1998, it is noted that the beneficiary will be paid in cash and with no taxes withheld. According to the contract, the beneficiary bears the responsibility of reporting her income to the Internal Revenue Service. The record contains no evidence that the beneficiary has ever done so.

As noted above, the director concluded that the petitioner had failed to demonstrate that the beneficiary had the required two years experience in a religious occupation. The AAO agrees, and notes that the evidence of record is not conclusive that what the beneficiary has been doing is a religious occupation at all. The petitioner states that the beneficiary will be the Assistant Director of Religious Education. On appeal, counsel has submitted several letters from witnesses to support the contention that the beneficiary has been a long-term employee of the petitioner. These letters simply cloud the issue. The witnesses variously describe the beneficiary as a teacher, an assistant principal, a counselor, a secretary, a Sunday School teacher, an administrator, and a guidance counselor. The petitioner indicates that the beneficiary started as a monitor (assistant teacher), advanced to supervisor (classroom teacher), administrative supervisor, and then to Assistant Director of Religious Education. The record is unclear, therefore, as to just exactly what the beneficiary has been doing. Most, and in some cases all, of the duties of the aforementioned job titles are of a secular nature. Furthermore the record contains no evidence that the beneficiary has received any training or education which would qualify her in any particular occupation, religious or otherwise. Although there is a claim that the beneficiary has been a teacher, the record is unclear on what subjects she is qualified to teach, or what subjects she has taught. The only document remotely related to education or training is a "Certificate of Associates Degree" issued to the beneficiary by the petitioner on June 6, 1995. The certificate was issued in recognition of the beneficiary's "fine performance in Childhood Development: Accelerated Christian Education."

Accordingly, it must be concluded that the petitioner has failed to establish that the beneficiary has been continuously carrying on religious work for the two-year period preceding the filing of the petition. For this 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.