

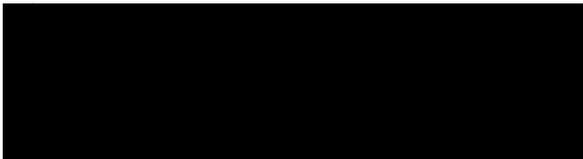
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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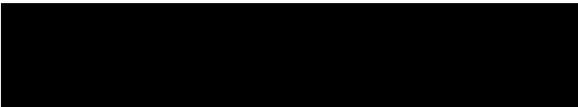
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, D.C. 20536



File:  Office: VERMONT SERVICE CENTER

Date: SEP 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 the Bureau of Citizenship and Immigration Services (Bureau) 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 affiliated with Seventh Day Adventist denomination. The petitioner 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 Bible instructor.

The director denied the petition, finding that the petitioner failed to establish that the offered position qualifies as a religious occupation for the purpose of special immigrant classification, and that the beneficiary has had the requisite two years of continuous experience in a religious occupation.

On appeal, counsel for the petitioner submits a brief.

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 beneficiary is a 46-year old native and citizen of Trinidad. On the Form I-360 petition, the petitioner indicated that the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on December 8, 1993.

The first issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

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

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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the regulations. 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.

In a response to the director's request for additional evidence, a pastor of the petitioning church wrote that:

We do not have published material which shows which occupations are religious occupations, except for the Articles of Incorporation and By-Laws, which state in paragraph (3) that one purpose of the church is to "address the immediate spiritual, physical and social needs of the people through religious services, prayer group meetings and bible school." Therefore, we have set up a Bible School for this purpose.

This position of Bible Instructor is a full-time position. The Bible Instructor will work more than 32 hours per week. The duties and responsibilities are to teach individuals from children to adult about the Bible and how it impacts our church and ultimately our lives.

There is no specific religious training within the organization for this position, however [the beneficiary] has not received formal training in a

seminary but holds an Associate in Science degree in social work from [the] Borough of Manhattan Community College which qualifies her to work with people.

The director determined that the record is insufficient to establish that the position of Bible instructor qualifies as a religious occupation. The director found that the petitioner failed to establish that the position is traditionally a permanent salaried position or that the duties of the position require specific religious training.

On appeal, counsel for the petitioner asserts that the pertinent regulation expressly lists religious instructors as a religious occupation, and the proffered position of Bible instructor is equivalent to a religious instructor position.

Counsel's argument is not persuasive. The job title is not dispositive. CIS evaluates each petition on a case-by-case basis.

The published literature provided by the petitioner fails to provide that a Bible instructor is a traditional position within the denomination. The published material does specifically list other positions. It is noted that the director requested that the petitioner list the duties and responsibilities associated with the position and state the amount of time that is required each week for the beneficiary to perform each duty and responsibility, but that the petitioner failed to provide that information. In review, the petitioner failed to establish that the position of Bible instructor is traditionally a full-time salaried occupation within the denomination.

The next issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for 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.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 30, 1999.

The petitioner submitted a letter from one of its pastors, stating that:

[The beneficiary] has been a member of our church for more than 2 years, and has worked in this position for the past two years. While [the beneficiary] was not

paid for this work by way of a regular salary, it was not a voluntary service, and she was compensated on an ad hoc basis.

The director determined that the petitioner had failed to establish that the beneficiary has the required two years of continuous experience in the religious occupation in the absence of any evidence to show that the beneficiary had been paid for her services.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. 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.

The legislative history of the religious worker provision of the Immigration Act of 1990¹ states that a substantial amount of case 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. See H.R. Rep. No. 101-723, at 75 (1990).

In *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com. 1963), the Commissioner determined that if the beneficiary were to receive no salary for church work, he would be required to earn a living by obtaining other employment. In analogous reasoning, CIS determines that unpaid experience does not qualify as the beneficiary must have sought outside employment to support himself. Further, without certified income tax returns and W-2's, the AAO is unable to determine how and whether the beneficiary has been employed.

Beyond the decision of the director, the petitioner failed to provide sufficient evidence of its ability to pay the beneficiary. See 8 C.F.R. § 204.5(g)(2). Since the appeal will be dismissed for the reasons stated above, this issue will not be discussed further.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS' purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within 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).

¹ Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990).

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.