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

ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 MASS, 3/F

25, Street N.W.

Washington, D.C. 20536

PUBLIC COPY



File: [Redacted]

Office: VERMONT SERVICE CENTER

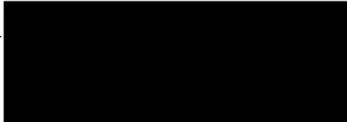
Date: SEP 30 2003

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



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

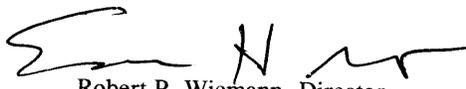
INSTRUCTIONS:

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 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 a minister at an annual salary of \$20,000.

The director denied the petition, finding the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of minister for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submits a brief and additional documentation addressing the director's concerns.

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 described as a church having a congregation of 500 members. The record reflects that the beneficiary is a native and citizen of Korea who was last admitted to the United States as a nonimmigrant student (F-1) on March 7, 1990 with authorization to remain for the duration of his studies.

At issue in this proceeding is whether the petitioner has established that the beneficiary had been continuously carrying on the vocation of minister for at least the two years preceding the filing of the petition.

The regulation at 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 26, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister since at least April 26, 1999.

In this case, the senior pastor of the petitioning church wrote CIS, stating that the beneficiary has worked 35 hours per week as a minister in the church since March 12, 1998.

In response to CIS's request for additional information and documentation concerning the beneficiary's employment, the petitioner submitted the following:

- A Form 941 (Employer's Quarterly Tax Return) for the period ending December 2000, that did not list the beneficiary as an employee.
- Copies of cancelled checks signed by the petitioner showing payments of \$1,250 to the beneficiary on January 2001, and from March 2001 through August 2001. No cancelled check for February 2001 is included in the record.
- Copies of cancelled checks signed by the petitioner

showing payments of \$1,300 to the beneficiary for October 2001 and November 2001. No check for September 2001 is included in the record.

- Copies of cancelled checks signed by the petitioner showing payments of \$1,380 to the beneficiary in December 2001, January 2002, and February 2002.
- Uncertified copies of the beneficiary's 2001 Form 1040 (U.S. Individual Income Tax Return) and Form W-2 (Wage and Tax Statement) indicating an income of \$12,000 from the petitioner.
- An uncertified copy of the beneficiary's 1998 Form 1040, indicating an income of \$7,300. The form indicates the beneficiary's principal business or profession as "Service."
- An uncertified copy of the beneficiary's 1999 Form 1040, indicating an income of \$12,000. The form again indicates the beneficiary's principal business or profession as "Service."
- An uncertified copy of the beneficiary's 2000 Form 1040, indicating an income of \$14,000. The form indicates the beneficiary's principal business or profession as "Youth Minister."

The director concluded that, in the absence of W-2's and certified tax returns for the entire period, the evidence submitted was insufficient to establish that the beneficiary had been continuously engaged in the vocation of minister for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner states that there was a dispute among the petitioning church's officials about the method of paying the beneficiary's salary due to his (unlawful) immigration status. In a letter submitted on appeal, the petitioner's senior pastor explains that church officials initially believed that the beneficiary should be paid in cash. However, it was decided in 2001 to put the beneficiary in payroll status because of his "full-time dedicated service."

In review, the AAO concurs with the director. Based on the evidence presented, the petitioner has established that it paid the beneficiary for services rendered during twelve out of the fourteen months from January 2001 through February 2002, inclusive. However, there is no objective evidence contained in the record to establish that the beneficiary was employed by the beneficiary as a minister for the two-year period beginning on April 26, 1999. It is

concluded that the evidence submitted is insufficient to establish that the beneficiary was continuously employed during the required two-year period. For this reason, the petition may not be approved.

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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

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.