

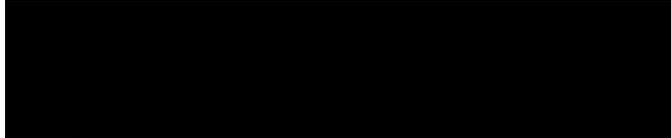
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 10 2005
WAC 02 253 50076

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a church. It seeks to classify 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), to perform services as a pastor. The director determined that the petitioner had not established that the beneficiary was qualified for the position within the organization.

On appeal, counsel submits a brief and additional documentation

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, 2008, 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, 2008, 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 Revenue 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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. 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 regulation indicates that the “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 regulation at 8 C.F.R. § 204.5(m)(3) states, 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:

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized member of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

The petitioner describes the duties performed by the beneficiary in the position as performing Sunday worship services, counseling and visiting church members, and acupuncture treatment.

The record contains a copy of a certificate of ordination, indicating that the beneficiary was ordained as a minister in 1986 and a copy of a ministerial license issued by the International Church of the Foursquare Gospel in 2000, and 2000 and 2001 cards identifying him as a licensed minister with the International Church of the Foursquare Gospel. The record also contains a copy of a license from the state of California, authorizing the beneficiary to practice acupuncture.

The evidence reflects that the beneficiary founded the petitioning organization in 1995.¹ An August 8, 2001 letter from the corporate secretary for the International Church of the Foursquare Gospel indicates that the beneficiary is the senior pastor of the petitioning organization, and a "work verification" signed by three members of the petitioner's council, states that the beneficiary has served as the senior pastor since January 1998.

On appeal, the petitioner submits a letter from the supervisor of the Korean District of Foursquare Church, who states that the beneficiary is a pastor in good standing with their organization, and that he served as senior pastor of Se-Seon Korean Foursquare Church for four years, and had been the petitioner's pastor since June 2000.

The evidence is sufficient to establish that the beneficiary is qualified for the position within the organization.

Nevertheless, the case may not be approved as the record now stands, and it will be remanded to the director to enter a new decision.

The beneficiary's weekly work schedule does not reflect that he is fully employed as a pastor. The schedule indicates that he performs acupuncture treatment and examination at least 12 hours per week and "helps" senior members by taking them to the hospital, market or other "specific help that has been requested." Although the schedule reflects that the beneficiary spends four hours on Monday performing "administrative works," no further information about the nature of this "administrative work" appears in the record. Further, as pastor of the church,

¹ An August 8, 2001 letter from the corporate secretary of the International Church of The Foursquare Gospel indicates that the petitioner is also known as Se-Seon. We accept this statement for the purpose of establishing whether or not the beneficiary is qualified for the position within the organization.

he would be expected to perform administrative duties other than during a specific four-hour period on one day of the week.

According to the schedule, the beneficiary devotes four hours on Wednesday and Friday afternoons, counseling and visiting church members, holds Thursday and Sunday worship services, and devotes Saturday to preparation for the Sunday service. No times are given for the periods that the beneficiary works on Thursdays, Saturdays and Sundays.

The petitioner submitted no evidence that acupuncture is a religious function within its denomination and that the ability to practice acupuncture is a prerequisite for being a minister within the denomination.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law 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, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis.

On remand, the director should address whether the petitioner has established that the beneficiary has been continuously employed as a pastor for two full years preceding the filing of the visa petition.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other

religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner has not shown the role of acupuncture in the practices of its religious denomination. As the position appears to require that the beneficiary perform services as an acupuncturist, he is not seeking entry into the United States for the purpose of solely carrying on the vocation of a minister.

On remand, the director should address whether the petitioner has established that it has extended a qualifying job offer to the beneficiary.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.