identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

[redacted]

C1

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 28 2005
WAC 03 252 54493

IN RE: Petitioner: [redacted]
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:

[redacted]

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 appeal will be dismissed.

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 Christian education evangelist. The director determined that the petitioner had not established that the beneficiary possessed the required two years membership in the denomination.

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) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form 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 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:
>
> > (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.

The petition was filed on September 5, 2003. Therefore, the petitioner must establish that the beneficiary was a member of its denomination throughout the two-year period immediately preceding that date.

The petitioner describes itself as a nondenominational church, and states that the beneficiary became a member of its denomination when she began working for the petitioning organization in August 2002. Prior to that, according to the petitioner, the beneficiary had been affiliated with the Presbyterian Church, and had worked for the Church from August 2001 to July 2002.

The regulation at 8 C.F.R. § 204.5(m)(2) defines religious denomination as:

> [A] religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship and religious congregations, or comparable indicia of a bona fide religious denomination.

On appeal, the petitioner states that its creed and doctrine are consistent with that of all Protestant churches, and that the beneficiary has been a member of, and a religious worker with, Protestant churches since 1978. The petitioner further states that the beneficiary became a "registered" member of the petitioning organization in June 2002.

The petitioner also states that it "employs ordained ministers, pastors, evangelists and staff from religious organizations of Protestant denominations." However, the petitioner does not claim that it is a multi-denominational organization whose members maintain their denominational affiliation upon association with the petitioner. Rather, the petitioner states that it is nondenominational, implying that it has no affiliation or association with any specific denomination.[1]

Counsel asserts on appeal that there is no statutory or regulatory requirement that the beneficiary's prior work experience must be with the "same" religious denomination. Although the statute and regulation do not use the term "same," they plainly state that the alien seeking entry into the United States must, for at least two years prior to the filing of the visa petition, have been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States and must be seeking entry in order to work for the organization or a bona fide organization affiliated with *the* religious denomination. Counsel's argument is clearly without merit.

While quoting the regulatory definition of "denomination," counsel also states that the statute and regulation are silent as to the meaning and definition of "denomination," and therefore, we must be guided by agency precedent decisions. Counsel then proceeds to analyze the historical provisions of the Department of Labor and Department of State regulations, asserting that these were the governing regulations regarding religious workers prior to the

---

[1] *See* definition of nondenominational at *www.answers.com*.

1990 amendment to the Act. Counsel also quotes what he asserts are precedent decisions and concludes that the regulation and precedent decisions have reduced the issue of "same denomination" to a "non-issue."

As the regulation explicitly provides a definition of "denomination," counsel's argument is again without merit. However, we note that the "precedential" case cited by counsel, *Matter of Faith Assembly Church*, 19 I&N Dec 391 (Comm. 1986), specifically states that it does not apply to employment based visa petitions. Further, counsel cites incorrectly and misapplies the former previsions of the Foreign Affairs Manual (FAM) as it is quoted in the Federal Register in volume 56 at 307301-01, 30706 (1991).

"Protestant" is defined by the dictionary as pertaining primarily to those who are not members of the Roman Catholic faith.[2] Counsel submits no evidence that every religious sect that identifies itself as Protestant share the same form of ecclesiastical government, creed or statement of faith, form of worship, code of doctrine and discipline, or religious services and ceremonies. Baptists historically identify themselves as separate from Methodists and vice versa.[3] The Presbyterian Church also distinguishes itself from other Protestant groups.[4] By identifying itself as nondenominational, the petitioner clearly distinguishes itself from other Protestant groups. Further, in its letter accompanying the appeal, the petitioner states that it operates under a religious doctrine and creed that is believed by "Protestant Churches of all denomination[s]," again clearly indicating that those who share the Protestant faith are of different denominations.

The petitioner has not established that the beneficiary has been a member of a qualifying denomination for two full years prior to the filing of the visa petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

---

[2] *See, e.g.*, the definition of Protestant at *www.webster-dictionary.net*.

[3] *See, e.g.*, *www.answers.com*.

[4] *See* "Presbyterian 101: A general guide to facts about the Presbyterian Church (U.S.A.)," *www.pcusa.org/101*.