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

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 04 2005
SRC 02 140 51898

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant 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.

Marie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification 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 he had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not demonstrated that the position offered qualifies as a religious occupation.

On appeal, counsel asserts that the petitioner's ordination had no significant effect on the petitioner's duties.

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 grounds for denial involved the petitioner's experience, and the nature of the position offered to the petitioner. We will discuss these two grounds together, because they intersect at a point that affects the outcome of the appeal.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.
>
> *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.

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), 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).

The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate 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 April 17, 2002. Therefore, the petitioner must establish that he was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

administrator of Financial and Language Ministries for the Hamilton County Baptist Association, states that the petitioner is the Hispanic Pastor for Primera Iglesia Baustista Hispana, a mission church of Red Bank Baptist Church. She does not, however, indicate how long the petitioner has held that position. The petitioner's own resume states that he has served as the church's Hispanic pastor since 1999, but his resume is not documentary evidence.

describes the position offered to the petitioner:

> The duties of the Hispanic Pastor at Primera Iglesia Bautista Hispana include leading Sunday worship services and delivering sermons; teaching Christian Education classes; promoting world wide mission awareness; and officiating weddings, funerals, and baby dedications. . . .
>
> Along with his duties as the Hispanic Pastor, he teaches English as a Second Language to members of the Hispanic community; an aide [to] the Community Outreach program offering language assistance with the Chattanooga Police; and runs a Soccer League for Hispanic youth and adults to share the gospel together.

The petitioner submits a copy of the petitioner's certificate of ordination, issued by Red Bank Baptist Church on August 25, 2001. This indicates that, prior to August 25, 2001, the petitioner was not an ordained minister.

A copy of a church form, completed by the petitioner, indicates that the petitioner began his position as pastor on July 20, 1999, the same day he entered the United States. A 1999 article (the exact date is missing from the photocopy submitted) from the *Chattanooga Times/Chattanooga Free Press* refers to the petitioner, with the title "Rev.," and "Mission Bautista, a Hispanic mission of Red Bank Baptist Church." More recent articles refer to the petitioner as pastor of that church.

The director instructed the petitioner to submit tax documents, pay stubs, and other evidence to establish that his work with the church was continuous, full-time, salaried employment. The director also requested further information regarding the credentials required for the petitioner's current position. In response, the petitioner has submitted various documents, such as pay records, corroborating his experience with the church.

With regard to the petitioner's credentials and duties, counsel states that the petitioner "is a capable pastor and has been since he arrived in the summer of 1999. His lack of formal ordination upon his arrival made him no less a minister." An unsigned document, identified as a "conversation" with the petitioner and of Red Bank Baptist Church, contains the following discussion of ordination:

> Ordination is a process that links state law and church practice in a way that confers legitimacy and approval upon leaders who are allowed to develop and mature without formal training. State law requires ordination for certain civil functions performed by church leaders, notably marriages. Southern Baptists use this legal requirement of the state as an opportunity to evaluate, and "graduate" church leaders into the profession of Pastor. . . .
>
> In effect, ordination is conferred by the elders of the Southern Baptist church primarily so the Pastor can come into conformity to the secular laws of the state that govern marriage licensing. In the state of Tennessee . . . , a person must be ordained to legally perform marriages. . . . [O]rdination is not conferred apart from other Pastoral duties.
>
> Ordination is used, in some degree, as a graduation ceremony, the congregation's stamp of approval, validation, and confirmation of the professional attainment, personal and spiritual commitment, and success of the junior Pastor who has been serving them.

Counsel asserts that, if the lack of ordination is a problem, then the petitioner should be viewed as a worker in a religious occupation. Counsel repeats this assertion on appeal, and we shall address it in that context.

The director denied the petition, citing the regulatory definition of a "minister" and stating that the petitioner had not established two years of experience in the position sought. The director also stated that the petitioner had not demonstrated that his position involves "traditional religious functions," but this finding has negligible support in the record. While we agree with the finding that the petitioner's intended future work is not in a "religious occupation," our reasons for that finding (explained above) differ substantially from the director's cited grounds.

On appeal, counsel maintains that the petitioner's "ordination did not affect a change in job duties." While many of the petitioner's duties were unchanged by the ordination, he (according to information provided by the petitioner) gained the right to perform wedding ceremonies, thus shifting himself from a lay preacher to a member of the "authorized clergy," and thus a minister.

Counsel has contended that it would be "overly restrictive" to hold that the petitioner was not a qualified minister until after his ordination. Nevertheless, 8 C.F.R. § 204.5(m)(2) specifically indicates that "a lay preacher not authorized to perform such duties" is not a "minister" for immigration purposes. Given the stipulation that the petitioner, prior to August 2001, was not authorized to perform weddings, the conclusion is inescapable that the petitioner did not fall under the regulatory definition of "minister" until the day of his ordination, and we cannot conclude that the petitioner was a minister (as the regulations contemplate that term) throughout the entire two-year qualifying period.

Having claimed, previously, that the petitioner was not allowed to perform weddings until after his ordination, counsel claims on appeal that the petitioner's ordination only affected "licensing procedures," and that the petitioner "has been functioning fully in his role since . . . July 1999." The implication is that the petitioner had been officiating at weddings even before his ordination. The record contains no documentary evidence to support this claim. If the petitioner did, indeed, refrain from officiating at weddings prior to his ordination, then he was not "functioning fully" as a minister at that time.

We turn to counsel's secondary assertion that the petitioner works in a "religious occupation" rather than in the vocation of a minister. The petitioner's work prior to his ordination can be construed as falling into that category. Following his ordination, however, the petitioner indicates that he was fully authorized to perform all religious functions, including weddings. Therefore, he now falls under the category of a "minister," which is not a "religious occupation." Because the petitioner changed from one type of worker to another during the qualifying period, he did not accumulate a full two years of experience in either type of work during the relevant period. He did not work continuously in a "religious occupation" after August 25, 2001. Furthermore, the petitioner does not intend to work in a "religious occupation" in the future. Rather, he intends to work as an ordained minister.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the petitioner must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. The regulations, as worded, draw a sharp distinction between an "authorized" (i.e., ordained) minister and a "lay preacher" or other member of a religious occupation. We are not at liberty to ignore that distinction and treat the petitioner's ordination as a mere formality of peripheral relevance. Similarly, the petitioner now falls into the category of a "minister," and he seeks to continue in that capacity. We cannot simply ignore this and arbitrarily deem him to work in a "religious occupation." We must classify the petitioner as a "minister," whether or not counsel believes that it would be to the petitioner's advantage to remove the petitioner from that category.

We stress, at the same time, that this finding is without prejudice to any new petition. The dismissal of the present appeal is in no way a finding that the petitioner can never be eligible for the immigrant classification sought. Had this same petition been filed after August 25, 2003, the available fact pattern would appear to support approval.[1] Within the context of the present petition, however, we must consider whether the petitioner was eligible as of the April 17, 2002 filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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.

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[1] Indeed, we note that the petitioner filed a new petition on September 16, 2003, with receipt number SRC 03 251 50566. Records indicate that this second petition was approved on November 16, 2004. Because the grounds for denial are tied to the present petition's April 2002 filing date, those grounds present no obstacle to the approval of the petitioner's newer petition. Because each petition corresponds to a separate proceeding, the present dismissal notice applies only to the petitioner's original 2002 petition, and has no adverse effect on the approved petition filed in 2003.