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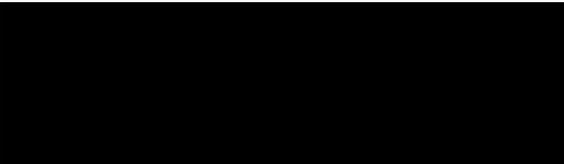
Office: NEBRASKA SERVICE CENTER

Date: AUG 09 2005

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Acting Director, Nebraska 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 pastor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel 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, 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 issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

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 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:

(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 October 10, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

The director stated that, as the petitioner had not established that the beneficiary was an employee of the petitioning organization during the qualifying two-year period, the petitioner had not established that the beneficiary had the required work experience. We withdraw this statement by the director. The statute and regulation do not require that the qualifying work experience must be as an employee of the petitioning organization.

The petitioner stated:

[The beneficiary] has been a duly authorized local minister of the Free Methodist denomination since June 1998. On June 29, 1999, the Oregon Annual Conference of the Free Methodist Church promoted [the beneficiary] to be a "conference ministerial candidate," which is a higher step in the hierarchy of authorized ministers. On June 28, 2002, he was promoted to the office of deacon by the same denomination.

The petitioner submitted copies of certificates indicating that the beneficiary was "received" as a conference ministerial candidate on June 13, 1999 and that he became a deacon with the denomination on June 28, 2002. The superintendent of the Oregon Conference of the Free Methodist Church stated that the denomination utilizes "titles such as 'local ministerial candidate,' 'conference ministerial candidate,' 'deacon,' and 'elder' to describe where a person stands in the hierarchy of 'authorized minister.' Consequently, [the beneficiary] is a duly and fully authorized minister in our denomination." The petitioner stated that the beneficiary has performed all of the sacerdotal duties of a minister, including solemnizing weddings (as authorized by state law) and funerals, and administering the sacraments.

According to the excerpt from the copy of *The Book of Discipline 1999* for the Free Methodist Church of North America submitted by the petitioner, the local ministerial candidate and the conference ministerial candidate are steps to becoming an ordained minister within the petitioner's denomination. Under paragraph A/501, *The Book of Discipline* states:

There are four stages to becoming a fully ordained Free Methodist minister. (1) The person sensing the call of God and the church to ministry is first licensed as a local ministerial candidate. The call is tested by service in the local church where initial training begins. (2) Step two involves acceptance by the annual conference as a ministerial candidate. During this

period the candidate prepares for the third step, (3) full conference membership. (4) Ordination to elder's orders completes the ordination process.

Paragraph B/477.1 states that a local ministerial candidate is one who "is considering a call to the ordained ministry." Paragraph A/530, subparagraph 4 makes it clear that a conference ministerial candidate is still in training:

A conference ministerial candidate shall be allowed a maximum of four years to complete the course of study required for admission into the conference in full membership . . . If the course of study is not completed in that time, status as a conference ministerial candidate may be continued only upon recommendation of the board of ministerial education and guidance.

Paragraph A/531 states:

When a conference ministerial candidate is under appointment to a church as pastor-in-charge, he/she is considered "clergy" (to maintain a lay/clergy balance) when serving on committees and boards. In all other matters he/she is considered a "lay person."

We note that paragraph A/532 refers to paragraph B/477.3, which is omitted from the 1999 *Book of Discipline*. However, the 1995 version is entitled: "Qualifications for deacon's orders," and provides for ordination upon completion of two years service as a ministerial candidate and recommendation by the ministerial education board for full membership.

The evidence establishes that the beneficiary was in training to become a minister within the petitioner's denomination and achieved the status of deacon, the first ordained position, on June 28, 2002. The evidence does not establish that the beneficiary had achieved ordination as an elder, the final stage of ordination, at the time the petition was filed. For purposes of this visa preference petition, a person is training for a vocation or occupation is not working in that vocation or occupation.

The evidence does not establish that the beneficiary was continuously engaged as a pastor for two full years preceding 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.