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

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: DEC 28 2006
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter 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 minister. The director determined that the petitioner had not established that the beneficiary 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 established its ability to compensate the beneficiary.

The appeal consists of a one-paragraph statement from [REDACTED] the petitioner's Executive Director:

The [beneficiary] was misguided and wrongfully advised into submitting Form I-360. She apparently was deceived by an advisor, whom she paid for their services, into thinking that she had met all of the criteria for such a petition. After reading your notice of decision, we realized this petition did not apply to the [beneficiary's] request for a visa. Please, we are asking for clear guidance on how [the beneficiary] can obtain permanent residency in this country seeing she has been here her entire adult life as well as being misguided and fraudulently misled in filing for her permanent residency.

The petitioner, on appeal, does not contest the director's stated grounds for denial. Rather, the petitioner concedes the beneficiary's ineligibility for the classification sought, and asserts that poor advice led to the filing of the petition. The AAO is not indifferent to the situation in which the beneficiary finds herself, but it is not the function of the AAO to serve as an alien's advocate or advisor on immigration matters. Even if this were not the case, the beneficiary's chances of remaining in the United States are contingent on a number of factors about which the record offers little or no information. The beneficiary may be better served by contacting a reputable attorney who specializes in immigration law, or an accredited representative of an organization recognized by the Board of Immigration Appeals. A roster of recognized organizations and accredited representatives is available at <http://www.usdoj.gov/eoir/statspub/recognitionaccreditationroster.pdf>.

In the present proceeding, the petitioner has essentially admitted that the beneficiary is not eligible for the benefit sought, and that the petitioner was "misled" into filing the present petition. Given this assertion, the AAO has little choice but to dismiss the appeal. The statutory and regulatory criteria for classification as a special immigrant religious worker are not discretionary guidelines that can be set aside for humanitarian or other considerations; they are essential requirements, and if the petitioner cannot meet those requirements, then the law does not permit approval of the petition, either at the time of initial filing or on appeal.

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 asserted that it cannot meet that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.