



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: LIN-99-082-50112 Office: Nebraska Service Center

Date: AUG 9 2000

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, 8 U.S.C. 1153(b)(4)

Public Copy

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an organization which seeks classification of 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 serve as the [REDACTED]

[REDACTED] The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience or his two-year membership in the petitioner's denomination. The director also found that the petitioner had failed to establish that the prospective occupation is a religious occupation.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

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, 2000, 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, 2000, 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 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 beneficiary is a forty-one-year-old married male native and citizen of India. The petitioner indicated that the beneficiary entered the United States in an undisclosed manner on December 6, 1992 and that he had remained in the United States since such date. The petitioner further indicated that the beneficiary had never worked in the United States without permission.

The first issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of 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 petition was filed on January 19, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from January 19, 1997 to January 19, 1999.

In its letter dated January 6, 1999, the petitioner stated that the beneficiary "has been employed full time (min. 40 hours per week) by our organization since September, 1998. However, [he] has been continuously involved with various religious institutions in the Chicagoland area since 1995." The petitioner submitted a photocopy of the beneficiary's transcript from the [REDACTED] where the beneficiary was enrolled from Spring 1997 through June 1998.

On March 2, 1999, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner stated that the beneficiary "has been performing his duties with our organization since September 8th, 1998 . . . Prior to the beneficiary's joining our organization he was a full time graduate student in [REDACTED] since January '97." The petitioner submitted a photocopy of the beneficiary's diploma from the [REDACTED] awarded to him on June 26, 1998. The petitioner also submitted photocopies of pay receipts made out to the beneficiary subsequent to the qualifying period.

On appeal, counsel argues that "full-time studies during the two year period immediately preceding the filing of a religious worker petition does not interrupt the religious work if the study is consistent with the religious work." Counsel cites Matter of Z-, 5 I&N Dec. 700 (Central Office 1954) to support his argument. In

Matter of Z-, it was held that continued study by an ordained member of the clergy was not interruptive of his or her continuous practice of a religious vocation. The beneficiary in this case is not an ordained member of the clergy and has never been engaged in a religious vocation as defined in this proceeding. Accordingly, any period of time spent studying at a Bible college does not constitute continuous work experience in a religious occupation.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from January 19, 1997 to January 19, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the petitioner has established that the beneficiary has been a member of its denomination for the two-year period prior to filing.

8 C.F.R. 204.5(m) (1) states, in pertinent part:

An 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 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.

8 C.F.R. 204.5(m) (2) defines a 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, religious congregations, or comparable indicia of a bona fide religious denomination.

The petition was filed on January 19, 1999. The petitioner must therefore establish the beneficiary's membership in its denomination from at least January 19, 1997 to January 19, 1999.

In a statement submitted with the petition, the petitioner stated that it is "non-denominational and operates in co-operation with Christian churches . . . . Therefore, [redacted] is affiliated with all the following Christian institutions." The petitioner provided a list of six organizations with which the beneficiary was purportedly involved. A representative of the

[REDACTED] stated that the beneficiary "was an active member of our church from 1993 to 1996." In a letter dated December 5, 1998, a representative of the Lombard Gospel Chapel stated that the beneficiary came "into fellowship two years ago."

On March 2, 1999, the director requested that the petitioner submit additional information. In response, the petitioner "clarified that our organization is non-denominational and operates in cooperation with other denominational and non-denominational churches."

On appeal, counsel states that the petitioner "submitted a letter which outlines the beneficiary's continuous membership in the denomination and affiliated organizations." The petitioner has stated that it is a non-denominational organization that cooperates with other denominations. The petitioner has not submitted any independent, documentary evidence of its affiliation with any of the churches the beneficiary belonged to during the two-year period prior to filing. As such, the petitioner has not established that the beneficiary was a member of its denomination from January 19, 1997 to January 19, 1999.

The next issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m) (2) states, in pertinent part, that:

*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.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily

administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In its letter dated January 6, 1999, the petitioner listed the beneficiary's duties as follows:

1. Lead and manage the administrative, social, spiritual and educational activities of [REDACTED] and [REDACTED];
2. Establish, communicate and oversee carrying out of department's short and long term goals;
3. Develop and implement policies and procedures needed to accomplish objectives;
4. Establish and maintain the department's annual budget;
5. Counsel and disciple the resident staff and resident assistants on a regular basis;
6. Develop, modify, maintain and control all aspects of the program at [REDACTED] and at [REDACTED], including employment, staff development, and evaluation of program staff;
7. Develop and maintain Biblically based residential program of counseling, work rehabilitation for resident's physical, emotional and spiritual development to help them gain control of their lives to overcome their addictions and destructive habits;
8. Responsibility for 4 chaplains at [REDACTED] and with the case manager at [REDACTED];
9. Recruit volunteers at both ministries to serve on committees, meet regularly with them to plan and share responsibilities; and
10. Share responsibility with Executive Director to represent [REDACTED] the community and Chicagoland area through contacts with churches, service organizations and businesses.

On March 2, 1999, the director requested that the petitioner submit additional information. In response, the petitioner reiterated the beneficiary's duties and stated that the beneficiary "is properly

qualified as he has successfully graduated in June '98 with a 3.9 grade point average with a Master of Arts degree in Biblical studies."

On appeal, counsel argues that the prospective occupation is a religious occupation. Counsel's argument is not persuasive. The petitioner claims that the beneficiary's education is a qualifying factor; however, the petitioner does not provide any specific reasons why this is so. There is no evidence that a Master of Arts degree in Biblical studies is a prerequisite to working in the prospective occupation. Based on the list of duties provided by the petitioner, it appears that many are administrative and humanitarian in nature. Accordingly, the petitioner has failed to establish that the prospective occupation is a religious occupation.

Beyond the decision of the director, the petitioner has failed to establish that it is a qualifying, non-profit religious organization as defined at 8 C.F.R. 204.5(m)(3) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

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.

**ORDER:** The appeal is dismissed.