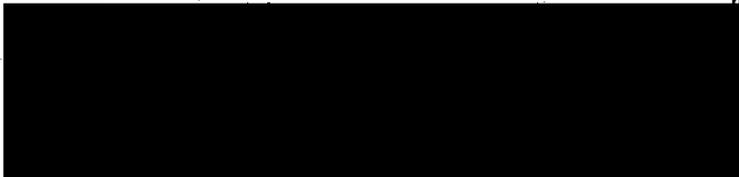




U.S. Department of Justice
Immigration and Naturalization Service

C-1

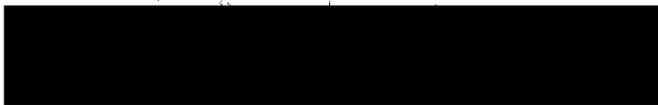
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-98-075-50217 Office: Vermont Service Center

Date: AUG 15 2000

IN RE: Petitioner:
Beneficiary:



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, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It 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 a pastoral assistant. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation. The director also found that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The director further found that the petitioner had failed to establish its ability to pay the proffered wage.

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 fifty-one-year-old married male native and citizen of [REDACTED]. The petitioner indicated that the beneficiary entered the United States as a visitor on [REDACTED] and that his authorized period of admission expired on [REDACTED]. The petitioner did not indicate whether the beneficiary had ever worked in the United States without permission.

The first 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 December 27, 1997, the petitioner stated that:

We wish to employ [the beneficiary] as a "Pastoral Assistant" . . . [He] will be responsible for providing religious, moral and spiritual support, guidance and counseling to our congregation members; making home visits when required. [He] completed the one year "Bible Study for Religious Leader" course of studies offered by the [REDACTED] in January, 1981.

The petitioner submitted a photocopy of a "certificate of course completion" awarded to the beneficiary in 1981 upon his completion of the "January Lay Leaders School."

On March 16, 1998, the director requested that the petitioner submit additional evidence. In response, the petitioner stated that the beneficiary "has been serving this Church as a 'Pastoral Assistant/Deacon' . . . since February 1994 to present . . . on a full time, voluntary basis." The petitioner submitted a photocopy of its Church Manual. According to the Church Manual, deacons:

have responsibility for the care of the church property At church services, the deacons are usually responsible for welcoming members and visitors as they enter the church Another important duty belonging to deacons is that of visiting church members in their homes The deacons assist in the celebration of the ordinances of the church The deacon is not authorized to preside at any of the ordinances of the church, nor can he perform the marriage ceremony.

On appeal, the petitioner argues that the prospective occupation is a religious occupation. The petitioner submits a weekly work schedule for a pastoral assistant/deacon. Contrary to the petitioner's assertion, the prospective occupation is not a traditional religious occupation. The petitioner has not established that the beneficiary had to undergo any specific religious training or theological education to qualify for the position of pastoral assistant. The contents of the "Bible Studies for Religious Leaders" course completed by the beneficiary have not been discussed. This vague reference to training completed by the beneficiary cannot be equated with a formal theological education.

Furthermore, the petitioner initially asserted that the beneficiary would be employed as a pastoral assistant. After the director requested additional information, the petitioner claimed that the beneficiary would also be employed as a deacon. The petitioner did not provide any explanation for this discrepancy. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. Matter of Izumii, Int. Dec. 3360 (Assoc.

Comm., Ex., July 13, 1998). Nevertheless, the duties of a deacon, as listed in the church manual, do not establish that this position is a religious occupation. There is no evidence that a deacon must be any more than a devout member of the congregation who is willing to assist at religious services and clean the church. Moreover, as the beneficiary has been performing these duties on a voluntary basis, it is clear that this position is not traditionally a full-time, salaried occupation in the church. As such, the petitioner has not established that the prospective occupation is a religious occupation.

The next 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 12, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from January 12, 1996 to January 12, 1998.

In its letter dated December 27, 1997, the petitioner stated that the beneficiary "has been serving our church [as a pastoral assistant] on a full time (35+hours/week), voluntary basis, from February, 1994 to date." On March 16, 1998, 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 reiterated that the beneficiary had been serving the church on a voluntary basis since February 1994.

On appeal, the petitioner states that "as additional evidence of his full time service (35+ hours/week) to our Church from February, 1994 to present, we are enclosing an applicable 'statement' attested to by myself (as Pastor), and numerous other congregation members." The petitioner submits a certificate signed by members of the church attesting to the beneficiary's work as a pastoral assistant/deacon. Neither the statute nor the regulations stipulate an explicit requirement that the work experience must have been full-time paid employment in order to be considered qualifying. This is in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. 8 C.F.R.

204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The regulations therefore recognize a distinction between someone practicing a life-long religious calling and a lay employee. The regulation defines religious occupations, in contrast, in general terms as an activity related to a traditional religious function. *Id.* In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of full-time salaried employment. See 8 C.F.R. 204.5(m)(4). Therefore, the prior work experience must have been full-time salaried employment in order to qualify as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in such an occupation.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from January 12, 1996 to January 12, 1998. 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 the ability to pay the proffered wage.

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

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that it will pay the beneficiary an annual salary of \$15,600.00. The petitioner submitted an unaudited financial statement for the year ended December 31, 1996. On March 16, 1998, the director requested that the petitioner submit additional information. In response, the petitioner again submitted the 1996 financial statement and also submitted an unaudited financial statement for the year ended December 31, 1997. On appeal, the petitioner submits the 1997 financial statement and states that it has submitted evidence to establish its ability to pay the proffered salary. Contrary to the petitioner's assertion, the evidence submitted in support of this petition is not sufficient. 8 C.F.R. 204.5(g)(2) provides a list of documents that

may be submitted to support a petitioner's claim to be able to pay a wage. The petitioner has not submitted any of these documents. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

Beyond the decision of the director, the petitioner has failed to establish 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.