



U.S. Department of Justice

Immigration and Naturalization Service

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



CI

DEC 4 2000

File: EAC-99-197-53972 Office: Vermont Service Center Date:

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)

IN BEHALF OF PETITIONER:



Public Copy

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.

Identifying data deleted to prevent clearly unauthorized release of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting 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 minister. 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 its ability to pay a 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, 2003, 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, 2003, 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 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 a letter dated June 9, 1999, the petitioner stated that:

The Watchtower Society's services are rendered by approximately 6,000 ministers that have taken a vow of obedience and poverty . . . [The beneficiary's duties include] attending a program of morning worship with other ordained ministers, attending a study of the Bible with other ordained ministers every Monday evening, and devoting many hours each week to a private study of the

Bible. These activities . . . can certainly be considered traditional religious functions.

On February 17, 2000, the director requested that the petitioner submit additional information. In response, the petitioner provided an hourly breakdown of the beneficiary's duties. The petitioner further stated that:

According to our religious practices, full-time religious workers are required to meet spiritual qualifications. They must be dedicated and baptized as one of Jehovah's Witnesses, be an ordained minister, be willing to volunteer their time and energies and accept a vow of poverty.

The petitioner submitted a photocopy of a certificate of ordination awarded to the beneficiary on February 19, 1983.

On appeal, counsel argues that the evidence submitted in support of this petition is sufficient to document that the prospective occupation is a religious occupation. Counsel's argument is unpersuasive. The petitioner has indicated that the beneficiary will attend worship services and Bible studies and engage in the private study of the Bible. The petitioner has further indicated that only those baptized as a Jehovah's Witness and ordained a minister may be considered to be ministers. It is clear that any devout member of the congregation would be capable of qualifying as a minister and engaging in the duties to be engaged in by the beneficiary. While the beneficiary did receive a certificate of ordination at the age of 19, the petitioner did not divulge what was required of the beneficiary prior to his ordination. The simple issuance of a document entitled "certificate of ordination," which is not based on specific theological training or education, does not prove that an alien is qualified to perform the duties of a minister or pastor. See Matter of Rhee, 16 I&N Dec. 607, 610 (BIA 1978). The petitioner has not established that the beneficiary will be engaged in a religious occupation as defined at 8 C.F.R. 204.5(m) (2).

The next issue to be examined is whether the petitioner has the ability to pay a 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.

In a letter dated June 9, 1999, the petitioner stated that:

Only those Jehovah's Witnesses who have attained to a high level of spiritual, moral, and physical aptitude are invited to become members of the "Bethel Family" Even though the ministers on our staff do not receive a salary, all of their medical, dental, and other physical needs are taken care of. As long as [the beneficiary] remains with us, he will be provided with housing, food, medical and dental insurance, and an additional reimbursement for his personal expenses.

On February 17, 2000, the director requested that the petitioner submit additional information. In response, the petitioner submitted brochures. These brochures indicate that members of the "Bethel Family" are provided with living expenses. These brochures are also submitted on appeal. The petitioner has established that it has the facilities and ability to support the beneficiary. As such, the petitioner has met the requirements at 8 C.F.R. 204.5(g)(2).

On appeal, counsel submits a photocopy of a decision rendered by this office concerning a separate petition filed by this petitioner. In that case the appeal was sustained. Copies of the visa petition and supporting documentation filed in support of the approved petition are not contained in the record of proceeding. Therefore, it is not clear whether the beneficiary in that case was eligible for special immigrant religious worker status, or if the approval of the petition involved an error in adjudication. However, if the other petition was approved based on the same position descriptions that are contained in this petition, the approval would constitute clear and gross error on the part of the Service. As established in numerous decisions, the Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., Sussex Engg. Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988); Matter of Church Scientology Int'l., 19 I&N Dec. 593, 597 (BIA 1988).

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.