

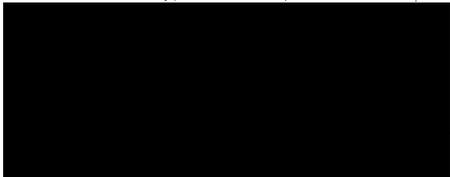


U.S. Department of Justice

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: EAC-98-070-50678 Office: Vermont Service Center

Date: DEC 11 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)

IN BEHALF OF PETITIONER: Self-represented

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

Identifying data redacted to
prevent clearly unwarranted
disclosure of personal privacy

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 catechist. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The director also found that the petitioner had failed to establish that the prospective occupation is a religious occupation.

On appeal, the petitioner 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 beneficiary is a thirty-six-year-old single male native and citizen of Poland. The beneficiary entered the United States in an undisclosed manner on July 20, 1988 and has been residing in the United States in an unlawful manner for an undisclosed period of time.

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 5, 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 5, 1996 to January 5, 1998.

In a letter dated December 21, 1997, the petitioner stated that the beneficiary "is working in a full-time position of Catechist from May of 1995 continuously to present." On appeal, the petitioner states that "evidence that the beneficiary has been paid for his services has been previously submitted in form of copies of Form 1099 for 1996 and 1997 and attached is also a copy of the beneficiary's Form 1099 for 1998." The petitioner submits a photocopy of a 1998 Form 1099 issued by it to the beneficiary. The 1996 and 1997 Forms 1099 referred to by the petitioner are not included in the record.

The petitioner has not documented the beneficiary's purported employment at the church during the two-year period prior to filing. On appeal, the petitioner indicates that the beneficiary received a salary during the qualifying period; however, the petitioner has not submitted any documentary evidence (such as cancelled pay checks or time sheets) to support this claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the 1998 Form 1099 cannot be considered independent, corroborative evidence of employment during the qualifying period. There is no documentary evidence supporting it, there is no indication that it was ever filed with the Internal Revenue Service, and it could have been completed at any time. Moreover, it covers a period subsequent to the two-year period prior to filing. As such, the petitioner has not established that

the beneficiary was continuously engaged in a religious occupation from January 5, 1996 to January 5, 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 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 December 21, 1997, the petitioner indicated that the beneficiary's duties include:

Biblical Study . . . Introduction to Dogma . . .
Christian morality, and sexual morality courses for young

adults . . . Young Catholic and the pressures of modern society . . . The Love of Jesus . . . Courses leading up to acceptance of Holy Sacraments, Baptism, Holy Communion, Confirmation, Penance, Holy Matrimony . . . Religious counseling to the disadvantaged.

The petitioner submitted a certificate awarded to the beneficiary on May 29, 1986 after he "completed 2 years course of liturgy studies with the final grade very good."

On June 12, 1998, the director requested that the petitioner submit additional information. In response, the petitioner stated that the beneficiary's duties "are clearly traditional religious functions above those performed routinely by our members." The petitioner then proceeded to detail the qualifications of "Anna Przedziecki."

On appeal, the petitioner argues that the position of catechist is listed in the regulations as a religious occupation. This statement is correct; however, the Service must look beyond the beneficiary's job title to the actual duties to be performed by the beneficiary. The petitioner submits photocopied pages from the Code of Canon Law which described the qualifications of a catechist.

The evidence submitted in support of this petition does not establish that the beneficiary's prospective occupation is a religious occupation. The certificate attesting to the beneficiary's completion of a two-year liturgy course is not evidence of the completion of a formal theological education. The petitioner did not provide any description of the content of this course. Further, based on the job description, as provided by the petitioner, it appears that any devout member of the congregation would be capable of working as a "catechist." As such, the petitioner has failed to meet the requirements at 8 C.F.R. 204.5(m)(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 as required at 8 C.F.R. 204.5(m)(4) or that it has the ability to pay the proffered wage as required at 8 C.F.R. 204.5(g)(2). 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.