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

[redacted]

File: EAC-00-085-52902 Office: Vermont Service Center Date: DEC 11 2000

IN RE: Petitioner:
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:

[redacted]

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 deleted to prevent clearly unwarranted invasion 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 an individual who seeks classification 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 his two years of continuous religious work experience.

On appeal, counsel argues that the petitioner 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 petitioner is a forty-five-year-old married male native and citizen of Brazil. The petitioner indicated that he entered the United States as a visitor on November 15, 1999 and that his

authorized period of admission expired on May 11, 2000. The petitioner further indicated that he had never worked in the United States without permission.

At issue in the director's decision is whether the petitioner has established that he 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 February 16, 2000. Therefore, the petitioner must establish that he had been continuously working in the prospective occupation for at least the two years from February 16, 1998 to February 16, 2000.

In a letter dated December 7, 1999, the secretary of The Christian Portuguese Association of the Adventist Church of the Seventh Day Reform Movement stated that "since April of 1994 to the present, [the petitioner] has been working in Portugal as Evangelical Pastor."

On June 15, 2000, the director requested that the petitioner submit evidence of his work experience during the two-year period prior to filing. The director indicated that any response must be received by September 9, 2000. In response, received on August 4, 2000, the petitioner stated that "I have Worked to Seventh Day Adventist Church - Reform Moviment [sic], all my life as religious work in several places."

The director denied the petition in a decision dated August 29, 2000. On appeal, the petitioner argues that the director issued his decision "11 days prior to the date with which we had to comply with your request for information." The petitioner indicates that his attorney mailed a response to the director's request for additional information and submits a photocopy of a letter, dated September 7, 2000, addressed to the Service from counsel.

The petitioner's contention that the director prematurely issued his decision is in conflict with the record and the regulations. 8 C.F.R. 103.2(b)(11) states:

> All evidence submitted in response to a Service request must be submitted at one time. The submission of only

some of the requested evidence will be considered a request for a decision based on the record.

The director received a response from the petitioner on August 4, 2000. As such, the director properly issued his decision on August 29, 2000.

Further, the evidence submitted in support of this petition does not establish that the beneficiary had two years of continuous religious work experience during the two-year period prior to filing. The petitioner has not submitted any contemporaneous, corroborative evidence (such as cancelled pay checks or time sheets) to document his purported work as a pastor during this time. 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). As such, the petitioner has not established that he was continuously engaged in a religious occupation from February 16, 1998 to February 16, 2000. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that his prospective employer is a qualifying, tax-exempt religious organization as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that he is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3) or that his prospective employer 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 ground 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.