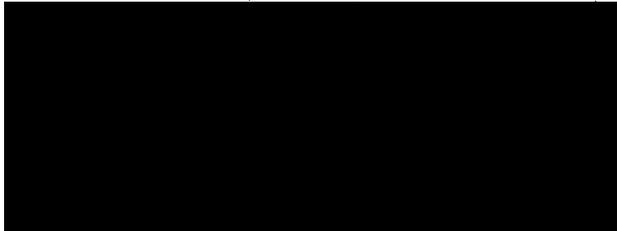




U.S. Department of Justice
Immigration and Naturalization Service

9

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



File: [Redacted] Office: Nebraska Service Center

Date: NOV 13 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.

Identifying data deleted to prevent clearly unwarranted invasion 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, Nebraska 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 religious teacher. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two-year membership in its denomination or two-year period of continuous religious work experience. The director also determined that the petitioner had failed to establish its ability to pay the proffered wage.

On appeal, dated March 29, 2000, the petitioner argued that the beneficiary is eligible for the benefit sought. The petitioner indicated that additional information would be submitted within 30 days. As of this date, over seven months later, no additional documentation has been submitted by the petitioner.

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 forty-two-year-old married female native and citizen of Korea. The beneficiary entered the United States as a visitor on March 24, 1999 and her authorized period of admission expired on September 23, 1999. The petitioner 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 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 August 5, 1999. The petitioner must therefore establish the beneficiary's membership in its denomination from at least August 5, 1997 to August 5, 1999.

In a letter dated August 2, 1999, the petitioner stated that the beneficiary "has been a member and employee of our affiliate church, The [REDACTED] . . . for the last three years." In a "certificate of affiliation" dated November 1, 1994, the senior pastor at The Full Gospel Inchon Church indicated that the petitioner was an affiliate church "believing in the Creation; The Church as The Body of The Lamb Jesus Christ; Divine Healing; The Gifts of The Holy Spirit and The Second Coming of Jesus Christ the Messiah." The petitioner also submitted a statement from the

[REDACTED]

(“FGFCMI”) classifying the petitioner as a subordinate member.

On December 1, 1999, the director requested that the petitioner submit additional information. In response, the petitioner stated that “the various denominations, a man-made-man-inspired set of circumstances, are almost contrary to the teachings of Jesus Christ . . . [the petitioner] operates as a symbol of unity and unifications of ALL churches regardless of denominations.”

On appeal, the petitioner states that “the Church is unable to condone, contain or conform to denominational requirements or regulations as this rationale is detrimental the very core of Church unity and unification.” The petitioner’s opinion of denominations is irrelevant in these proceedings. The regulations stipulate that the beneficiary must have been a member of the petitioner’s denomination for at least the two-year period prior to filing. The petitioner has submitted conflicting evidence concerning its denominational affiliation. The petitioner initially submitted evidence that it was a member of the beneficiary’s Korean church denomination and a member of FGFCMI. Subsequently, the petitioner has claimed that it is a symbol of all churches. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). The petitioner has not submitted any evidence that the beneficiary has been a member of its denomination from at least August 5, 1997 to August 5, 1999. As such, the petitioner has failed to meet this regulatory requirement.

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 August 5, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from August 5, 1997 to August 5, 1999.

The petitioner submitted the beneficiary’s “service record” from the Full Gospel Incheon Church which indicated that the beneficiary worked as a religious teacher from September 2, 1996 to the date of

the statement (February 5, 1999). This certificate further indicated that the beneficiary received a monthly salary of 1,200,000 won.

On December 1, 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 submitted a photocopy of the beneficiary's previously-submitted service record.

On appeal, the petitioner stated that the beneficiary "is still on the payroll of Full Gospel Incheon Church." 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 submitted any corroborative, documentary evidence (such as pay checks or time sheets) to support its assertion that the beneficiary has worked at the Full Gospel Incheon Church. 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).

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from August 5, 1997 to August 5, 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 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 \$1,500.00. On December 1, 1999, the director requested that the petitioner submit evidence of its ability to pay this wage. In response, the petitioner submitted a letter from an individual who stated that he was "pledging a \$75,000.00 a year financial support of" the petitioner. The petitioner also submitted bank statements. On appeal, the petitioner stated that it "will have NO difficulty in paying [the] beneficiary." The evidence submitted in support of this petition is not sufficient. The bank statements may indicate how much money the petitioner had on a given date; however, they do not indicate what debts the petitioner may have been obliged to pay. Further, 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 prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2). As the appeal will be dismissed on the grounds discussed, this issue 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.