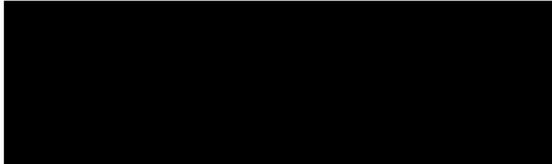




U.S. Department of Justice

Immigration and Naturalization Service

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



CI

File: EAC-99-212-51131 Office: Vermont Service Center

Date:

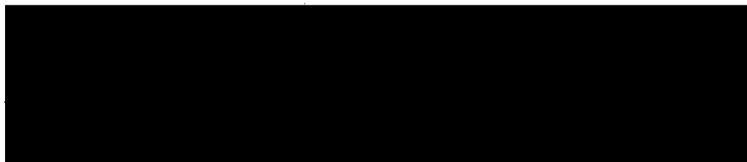
NOV 27 2000

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)

IN BEHALF OF PETITIONER:



Public Copy

Identified and released to prevent clearly documented 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

Mary J. 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 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 corps planter. The director denied the petition determining that the petitioner had failed to establish that it is a qualifying, nonprofit, tax-exempt religious organization. The director also found that the petitioner had failed to establish that the prospective occupation is a religious occupation.

On appeal, dated August 9, 2000, counsel argued that the beneficiary is eligible for the benefit sought. Counsel further indicated that he would submit additional information within 30 days. As of this date, over three months later, no additional evidence has been submitted by counsel.

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 petitioning organization meets the requirements of 8 C.F.R. 204.5(m)(3), which in pertinent part, states that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organizations's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

The petitioner submitted a letter dated October 10, 1955 from the Internal Revenue Service acknowledging [REDACTED] as a tax-exempt religious organization. This letter was not addressed to the petitioning organization's address. On February 18, 2000, the director requested that the petitioner submit evidence of its affiliation with [REDACTED]. In response, the petitioner submitted photocopies of previously-submitted documents and counsel argued that [REDACTED] is a qualifying organization. On appeal, counsel again argued that the petitioner has established that it is a nonprofit religious organization. Counsel submitted a printout from [REDACTED] web site which indicates that the petitioning organization is, in fact, affiliated with [REDACTED]. As such, the petitioner has satisfied the requirements at 8 C.F.R. 204.5(m)(3).

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 June 17, 1999, the petitioner stated that the "position of Corps Planter (Pastor) is a significant traditional, religious occupation." On February 18, 2000, the director requested that the petitioner submit additional information. In response, the petitioner stated that the beneficiary's duties are "pastoral visitation . . . sermon/program preparation . . . leading worship services . . . conducting Bible studies . . . co-ordinating youth/adult programming . . . administration of church." The petitioner further stated that the beneficiary "completed a diploma program through the Elim Bible Institute." The petitioner submitted a photocopy of the beneficiary's diploma awarded to him on November 17, 1976 from the [REDACTED].

On appeal, counsel argued that the beneficiary's prospective occupation is "a religious occupation relating to a traditional religious function and, further, that the duties requires a full-time, religiously-trained worker to perform them." The evidence submitted in support of this petition does not establish that the prospective occupation is a religious occupation. Based on the description of the job duties, and statements made by the

petitioner, it is not clear that any formal religious training is required of corps planters. The petitioner received a diploma from a Bible institute. There is no evidence of what was required of the beneficiary prior to his receipt of this diploma. An undisclosed course of study at a Bible institute cannot be deemed a formal theological education. Further, the petitioner has not established how any course work completed by the beneficiary at the Bible institute qualified him to work as a corps planter. It appears that any dedicated, caring member of The Salvation Army would be qualified to work as a corps planter. As such, the petitioner has failed to establish that the prospective occupation is a religious occupation.

Counsel also cited several precedent decisions to support his argument that the statements of the petitioner were sufficient evidence of the beneficiary's eligibility. It must be noted that this decision is based on the petitioner's statements and evidence submitted by the petitioner which indicate that the beneficiary has not been and will not be engaged in a religious occupation. Also, 8 C.F.R. 204.5(m) (3) (iv) allows the director to request appropriate additional evidence relating to the eligibility of the beneficiary. Consequently, the director's decision is not contrary to precedent decisions rendered by this Service.

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.