



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

CA



File: EAC-99-210-53063

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:



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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

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 an assistant 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 the beneficiary's two years of continuous religious work experience.

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 beneficiary is a thirty-eight-year-old married female native and citizen of Korea. The petitioner indicated that the beneficiary entered the United States as a visitor on December 10, 1990 and that her authorized period of admission expired on June 9, 1991. The petitioner further indicated that the beneficiary had never worked in the United States without permission.

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 10, 1999, the petitioner listed the beneficiary's duties as follows:

1. To direct every church worship services when a senior pastor is away;
2. To consult the church members;
3. To plan, organize and direct religious education program designed to promote religious education;
4. To teach religious studies to the church members; to preach the Gospel;
5. To counsel the church members with both personal and religious problems individually and in groups;
6. To engage in church's various activities.

The petitioner also indicated that "the incumbent must have been ordained as a minister, as well as the college degree in Theology and experience in teaching Bible." The petitioner submitted a certificate of graduation awarded to the beneficiary upon her receipt of a bachelor of theology degree on February 15, 1983 from the Korean Presbyterian Chong Hwe Theological Seminary. The petitioner also submitted the beneficiary's certificate of ordination awarded on February 1, 1987. The petitioner also submitted a photocopy of its by-laws dated January 10, 1994. The position of "assistant minister" is not described in these by-laws.

On February 22, 2000, the director requested that the petitioner submit additional information. In response, the petitioner reiterated previously-made assertions.

On appeal, counsel argues that "the proposed position qualifies for the classification being sought in the beneficiary's behalf." The petitioner reiterates previously-made assertions and submits photocopies of previously-submitted documents. Contrary to counsel's argument on appeal, the evidence submitted does not indicate that the prospective occupation is a religious occupation. While the beneficiary attended a seminary, there is no indication of how this education qualified her for the position of assistant minister. It appears that many of the beneficiary's duties, as described by the petitioner, could be performed by any devout, Korean-speaking member of the congregation. Also, the petitioner did not describe what, if any, education or training was required of the beneficiary prior to receipt of her certificate of 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). Moreover, as the position of "assistant minister" is not described in the petitioner's by-laws, it is apparent that the position is not traditionally a full-time, salaried occupation within the

denomination. Accordingly, the petitioner has failed to establish that the prospective occupation is a religious occupation.

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 June 30, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from June 30, 1997 to June 30, 1999.

In a letter dated June 10, 1999, the petitioner stated that the beneficiary "has faithfully served for our church as an assistant minister." In a separate letter dated June 10, 1999, the petitioner stated that it "is prepared to offer [the beneficiary] a salary of \$20,000.00 per year." The petitioner submitted the beneficiary's certificate of ordination awarded on February 1, 1987. The petitioner also submitted a photocopy of the beneficiary's 1998 income tax return completed on June 9, 1999. The beneficiary listed her occupation as "religious teacher." The tax return is not supported by any documentary evidence (such as a Form W-2), and there is no evidence that this return was ever filed with the Internal Revenue Service.

On February 22, 2000, 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 reiterated previously-made statements. The petitioner also submitted a photocopy of the beneficiary's 1999 income tax return. The beneficiary listed her occupation as "manicurist." Again, the tax return is not supported by any documentary evidence (such as a Form W-2), and there is no evidence that this return was ever filed with the Internal Revenue Service.

On appeal, counsel argues that the beneficiary's tax returns "support . . . that she was paid the full time salary for two full years." The accountant who prepared the beneficiary's tax returns states that the beneficiary was mistakenly labeled a "manicurist" and should have been described as an assistant minister.

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 sufficient evidence to document the beneficiary's full-time, salaried position throughout the two-year period prior to filing. The certificate of ordination awarded to the beneficiary in 1987 does not document the performance of ministerial duties throughout the two-year period. Also, counsel's argument that the beneficiary's tax returns are sufficient is unpersuasive. As was previously stated, these returns were not supported by any independent, corroborative evidence and there is no evidence that they were ever filed with the Internal Revenue Service. Also, these returns were prepared based on information provided by the beneficiary. 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). Moreover, when the petition was filed, the petitioner indicated that the beneficiary had overstayed her authorized period of admission into the United States and that she had never worked without permission. The petitioner is also claiming, however, that the beneficiary received a salary for her duties at the church. There is no evidence that the beneficiary ever received authorization to work in the United States. 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 established that the beneficiary was continuously engaged in a religious occupation from June 30, 1997 to June 30, 1999. 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 it made a valid job offer as required at 8 C.F.R. 204.5(m)(4). Also, the petitioner has failed to establish 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.