

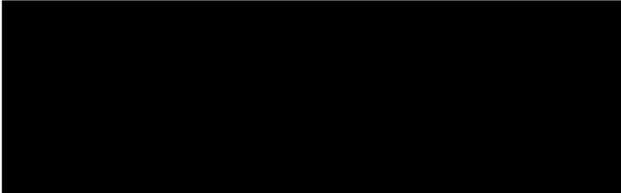


U.S. Department of Justice

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-99-225-51873 Office: Vermont Service Center

Date: SEP 19 2000

IN RE: Petitioner:
Beneficiary:



Petition:



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

Terrance M. O'Reilly, 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 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 pastor of [REDACTED]. The director denied the petition determining that the petitioner had failed to establish that it is a qualifying, non-profit religious organization. The director also found that the petitioner had failed to establish that the prospective occupation is a religious occupation or that the beneficiary had two years of continuous religious work experience. Also, the director found that the petitioner had failed to establish its ability to pay the proffered wage.

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, 2000, 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, 2000, 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 an "exempt organization certification" from the state of New York. On March 4, 2000, the director requested that the petitioner submit evidence of its exemption from Federal income tax. In response, the petitioner submitted a photocopy of its certificate of incorporation. On appeal, the petitioner submits photocopies of these previously-submitted documents. The petitioning organization has not established that it has been granted an exemption by the Internal Revenue Service, and the evidence submitted to establish that the church would be eligible for such an exemption does not meet the requirements of 8 C.F.R. 204.5(m)(3)(i)(B). "Such documentation as is required by the Internal Revenue Service" includes Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, the Schedule A attachment which applies to churches, and a copy of the organizing instrument of the organization, which must contain the requisite dissolution clause. Accordingly, the petitioner has not met 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 July 20, 1999, the petitioner stated that the beneficiary will:

give Pastoral and Administrative oversight to all children's ministry programs (Sunday, Mid-week, Community outreaches, Vacation Bible School and so on) at New Testament Church as well as consulting in this area to the churches that New Testament Church gives oversight to. [The beneficiary] will also be active in New Testament Christian Academy (a ministry of New Testament Church), St. Lawrence Bible Institute (a ministerial training ministry of New Testament Church) and the Music Ministry of New Testament Church.

The petitioner submitted a photocopy of the beneficiary's transcript from the [REDACTED] which indicated he received a Bachelor's degree in theology in April

1987. The petitioner also submitted a photocopy of a certificate of ordination awarded to the beneficiary on November 24, 1989.

On March 4, 2000, the director requested that the petitioner submit additional information. In response, the petitioner submitted photocopies of the beneficiary's ministerial credentials.

On appeal, the petitioner lists the beneficiary's duties as "Teacher in our Christian Day School . . . Worship Leader . . . Perform Pastoral Duties . . . Oversee Children's Church." The petitioner has not established that the prospective occupation is a religious occupation. While the beneficiary may have received a degree in theology, it is not clear how, if at all, this degree qualifies the beneficiary for the prospective occupation. Based on the information provided by the petitioner, it appears that the beneficiary is an active member of the congregation; however, active participation in the petitioner's activities does not equate to the performance of duties associated with a religious occupation. Further, the beneficiary's certificate of ordination is not sufficient to establish his engagement in a religious occupation. 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). 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 July 21, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from July 21, 1997 to July 21, 1999.

In a letter dated July 20, 1999, the petitioner stated that the beneficiary:

has been a member of New Testament Church since November 1996 . . . At that time, the Church was unable to provide

full-time employment or remunerate [the beneficiary] so [he] supplement [his] income by being employed in Cornwall Ontario, Canada for approximately 28 months . . . In April of this year [the beneficiary] was brought into a full-time staff position at New Testament Church.

On March 4, 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 submitted photocopies of the beneficiary's Canadian "statements of remuneration paid" for 1993, 1994, and 1995. All of these documents relate to time outside of the qualifying period and, therefore, have no probative value.

On appeal, dated July 31, 2000, the petitioner states that the beneficiary "has only been employed 'full-time' for the past 16 months [however] he had many pastoral responsibilities for the previous 19 months . . . he was extremely involved as a member in the religious vocation for which he was trained."

Neither the statute nor the regulations stipulate an explicit requirement that the work experience must have been full-time paid employment in order to be considered qualifying. This is in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The regulations therefore recognize a distinction between someone practicing a life-long religious calling and a lay employee. The regulation defines religious occupations, in contrast, in general terms as an activity related to a traditional religious function. *Id.* 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 evidence suggests that the beneficiary was merely an active volunteer at the petitioner's organization until April 1999. Therefore, the petitioner has not established that the beneficiary was continuously engaged in a religious occupation from July 21,

1997 to July 21, 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 a weekly salary of \$432.69. The petitioner submitted a photocopy of a self-prepared financial statement. On appeal, the petitioner submits a photocopy of a 1999 Form W-2 issued by it to the beneficiary. There is no evidence that this form was filed with the Internal Revenue Service and it is not supported by any independent, documentary evidence (such as cancelled pay checks). The evidence submitted in support of this petition is not sufficient. 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 it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). 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.