



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-99-217-54066 Office: Vermont Service Center Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

SEP 20 2000

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly
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 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 associate pastor. 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 it had the 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 a photocopy of its articles of incorporation and evidence of its tax-exempt status in the state of New Jersey. On February 18, 2000, the director requested that the petitioner submit additional information. In response, the petitioner submitted photocopies of previously-submitted documents. On appeal, the petitioner submits a letter from [REDACTED] executive director of the [REDACTED]

[REDACTED] asserts that the petitioning organization is a member of the [REDACTED]. The evidence submitted on appeal meets 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 26, 1999, the petitioner stated that the beneficiary:

will be involved in the day to day operations of the congregation. He will conduct some of the worship services, preach the Gospel of our Lord Jesus Christ, as well as perform other duties associated with the beliefs and practices of the [REDACTED] faith. He will provide spiritual and moral guidance, as well as counseling, to church members and/or community members who so request.

The petitioner submitted a photocopy of its constitution. The officers of the church are listed in this constitution; however, "associate pastor" is not listed among the officers of the church. The petitioner also submitted a photocopy of the beneficiary's diploma from the Baptist Theological Seminary of Western Cuba which indicated that the beneficiary received a diploma in theology on June 15, 1985 and a photocopy of the beneficiary's certificate of ordination awarded to him on February 21, 1988.

On February 18, 2000, the director requested that the petitioner submit additional information. In response, the petitioner listed the beneficiary's duties as follows:

- a. Interpret doctrine according to Baptist faith.
- b. Approve all literature to be used by different departments.

- c. Developing new training (discipuling) [sic] programs.
- d. Instruct people in the path to salvation as prepared and presented by our Lord, Jesus Christ and teach/train church members on testifying to others.
- e. Director of the missionary unions.
- f. Plan an annual Christian education calendar.
- g. Provide an annual budget for the Christian Education Department.
- h. Assist our senior pastor in all pastoral duties.

The petitioner continued that "this is a new position that due to the big amount of Spanish speaking people in our community we would like to develop."

On appeal, the petitioner again submits a photocopy of its constitution. The petitioner refers to Article VIII of the constitution. Article VIII refers to the election of and qualifications for a pastor at the church. Again, there is no discussion of the "associate pastor" position. The petitioner argues that the prospective occupation is a religious occupation. The petitioner's argument is not persuasive. As the prospective position is not included in its constitution, and the petitioner has stated that it is a new position, it is clear that "associate pastor" is not traditionally a full-time, salaried occupation within the denomination. Further, the petitioner has not established what, if any, training or education was required of the beneficiary prior to qualifying for the occupation. The petitioner did not discuss what the beneficiary had to complete prior to receiving either his diploma or his 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). 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 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 the beneficiary will receive an annual salary of \$18,000.00. The petitioner submitted several bank statements. On February 18, 2000, the director requested that the petitioner submit evidence of its ability to pay the beneficiary's salary. In response, the petitioner submitted a financial statement for the twelve-month period ending December 31, 1999. This statement was not audited. On appeal, the petitioner submits a self-prepared financial statement. The evidence submitted in support of this petition is not sufficient. The bank statements may demonstrate how much money the petitioner had on a given date; however, they do not indicate what debts the petitioner was 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).

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.