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

[redacted]

File: WAC-98-086-51482 Office: California Service Center Date: JAN 10 2000

IN RE: Petitioner:
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)

Public Copy
Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

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

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as 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). The director denied the petition finding that the petitioner failed to establish that the beneficiary's past voluntary service as a Sunday school teacher, while engaged in a secular occupation, had satisfied the requirement of having been continuously carrying on a religious occupation for at least the two years preceding the filing date of the petition. The director also found that the petitioner failed to demonstrate the ability to pay any proffered wage.

On appeal, the petitioner's representative submitted a letter from the pastor of the church stating that the beneficiary has been an active member of the congregation since 1992 and has been "working" for the two years preceding filing of the petition. The pastor also stated that the church is willing to financially assist the beneficiary, should that become necessary.

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 petitioner is a church claiming affiliation with, and tax exempt recognition through, the Presbyterian Church USA denomination headquartered in [redacted] The beneficiary is described as a thirty-four-year-old male native and citizen of Mexico who last entered the United States in 1988, in an undisclosed manner. The beneficiary's current immigration status is unknown. The petitioner submitted documentation stating that the beneficiary has been continuously employed in the United States as a "welder and technician" since 1988.

The statute provides for special immigrant classification of aliens as religious workers. The petitioning church in this case bears the burden to satisfy all eligibility requirements. The petitioner must submit, in pertinent part, a qualifying job offer for employment of the beneficiary, establish that it is a qualifying tax exempt religious organization, and establish that the beneficiary had been continuously carrying on a religious vocation or occupation for at least the two years preceding filing.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

> 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 the 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. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue Code of 1986 at the request of the organization. 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.

While not discussed in the director's decision, 8 C.F.R. 204.5(m)(3)(i) requires that the petitioner submit evidence that it is recognized as a qualifying tax exempt religious organization or that it is eligible for such exemption. The record in this matter does not contain adequate documentation that the Presbyterian

Church USA has a group tax exemption or that the petitioning church is formally covered under any such group exemption. For this reason, the petition may not be approved.

Also not discussed in the director's decision, 8 C.F.R. 204.5(m)(4) requires that an official of the church submit a written offer of employment setting forth the terms of remuneration for the position. The record does not contain a written offer of employment from an official of the petitioning church as required. The record contains a letter from Rev. [redacted] stating that the beneficiary has been an active volunteer with the church and that the church is willing to financially assist him to prevent him from becoming a burden on the government. This document does not constitute a job offer. For this reason as well, the petition may not be approved.

8 C.F.R. 204.5(m)(1) requires proof that the beneficiary had been continuously carrying on a religious vocation or occupation for at least the two years preceding filing of the petition. The record in this case reflects that the beneficiary has been continuously engaged in a secular occupation since 1988. Part-time voluntary participation in activities with one's church does not constitute continuously carrying on a religious vocation or occupation. For this reason as well, the petition may not be approved.

8 C.F.R. 204.5(g)(2) requires the submission of the church's annual reports, federal tax returns, or audited financial statements in order to establish the ability to pay the proffered salary of the job offer. The petitioner has not satisfied this documentary requirement. The petitioner submitted a typed financial statement, however, based on the extreme documentary deficiencies in this proceeding, the Service has no means to verify that the document is a valid annual financial statement of a functioning religious organization. For this reason as well, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.