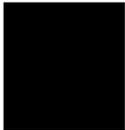


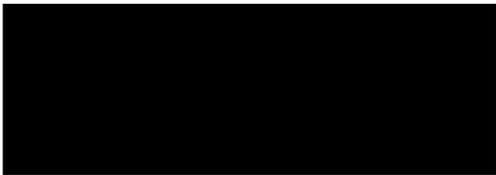


U.S. Department of Justice

Immigration and Naturalization Service



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



File: SRC-96-221-50857 Office: Texas Service Center

Date: JUN 12 2000

IN RE: Petitioner: [Redacted]
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)

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

JUN 2000 082003

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

The petitioner is an organization which 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 financial director. The director denied the petition determining that the petitioner had failed to establish that it made a valid job offer to the beneficiary.

On appeal, the petitioner states that it has made a valid job offer to the beneficiary.

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 beneficiary is a forty-six-year-old single female native and citizen of Trinidad. The petitioner indicated that the beneficiary

entered the United States in an undisclosed manner in December 1991. The petitioner further indicated that the beneficiary had never worked in the United States without permission.

At issue in the director's decision is whether the petitioner has made a valid job offer.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In its letter dated February 12, 1996, the petitioner stated that "we look forward to utilising [sic] the unique skills which [the beneficiary] possesses." On September 6, 1996, the director requested that the petitioner submit additional evidence about the job offer. In response, the petitioner stated that:

The position offered [the beneficiary], that of Financial Director, will be a part time position, 16 hours per week. She will spearhead any fund raising and grant writing as well as act as a liaison between our organization and the community. [The beneficiary's] many work skills will enable her to work in a secular job for approximately 30 hours per week. We will encourage this until such time as we change our mission plan.

On appeal, the petitioner states that:

Our original letter regarding job offer, was based on an insufficient knowledge of the Immigration laws of the United States of America. We accept full responsibility for this mistake.

As a result, The Board of Directors of the G.A.P. Foundation, have decided to extend to [the beneficiary] the position of Financial Director, with an annual salary of eighteen thousand dollars (\$18000.00), plus increments.

The petitioner has not established that it made a valid job offer to the beneficiary. Initially, the petitioner stated that the

beneficiary would be a part-time, volunteer employee at its organization until it "change[d its] mission plan." Subsequent to the director's denial, the petitioner stated that it would hire the beneficiary on a salaried basis. The petitioner stated that it would pay the beneficiary a salary, not because it had changed its mission plan, but because it had not understood the pertinent laws. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. Matter of Izumii, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998). As such, it cannot be concluded that the petitioner has made a valid job offer to the beneficiary.

Beyond the decision of the director, the petitioner has failed to establish the beneficiary's two years of continuous religious work experience as required at 8 C.F.R. 204.5(m)(1). Also, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2), or that it is a qualifying, non-profit religious organization as defined at 8 C.F.R. 204.5(m)(3). Further, the petitioner has failed to establish that it has the ability to pay a wage as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the ground 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.