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]

Public Copy

File: EAC-98-078-53238 Office: Vermont Service Center Date: MAY 3 2000

IN RE: Petitioner: [redacted]
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:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a religious organization. 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), in order to employ her as a lay religious instructor/counselor. The director denied the petition finding that the petitioner failed to adequately establish that the beneficiary had been continuously employed by the petitioner for the two years preceding the filing of the petition as claimed.

On appeal, counsel for the petitioner argued that the alien has two years of experience and submitted copies of the beneficiary's 1996 and 1997 tax returns to support the claim.

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 described as a religious organization operating

a temple and a Torah institute established in 1986 with a membership of 250. It claims to employ two permanent Rabbis and two lay religious counselors. The organization is recognized by the Internal Revenue Service as a tax exempt religious organization. It seeks to employ the beneficiary as a full-time lay religious worker at a salary of $400 per week, or $20,800 per year.

The beneficiary is a native of the former USSR and a citizen of Israel who last entered the United States on November 7, 1993, as a B-2 visitor. The record reflects that the beneficiary remained beyond his authorized stay and has resided in the United States since such time in an unlawful status. The petitioner failed to respond to the question on the petition form requiring the disclosure of any unauthorized employment in the United States.

The record has been reviewed *de novo*. It must first be noted that the petitioner did not provide all required information on the petition form. Absent all required information, the petition cannot be properly adjudicated. The petition may be denied as incomplete solely on this basis. See 8 C.F.R. 103.2(a)(1).

At issue is whether the petitioner has established that the beneficiary has had the requisite 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 January 14, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious occupation since at least January 14, 1996.

In response to a written request from the director for proof of the beneficiary's prior experience, an official of the petitioner submitted a letter stating, in pertinent part, that the beneficiary "has been employed as a Religious Counselor since December 18, 1995." The director noted that there was no evidence of such a claim and that the beneficiary did not report having a United States social security number under which he could have been employed.

The evidence furnished on appeal is insufficient to overcome the grounds for denial of the petition. The non-certified copies of tax return forms are not conclusive evidence that the beneficiary was employed by the church as claimed. There is no evidence to show that the forms were filed with the Internal Revenue Service or

that the beneficiary was continuously remunerated for the two-year period. In addition, the petitioner has not testified that the employment was continuous, has not stated the terms of remuneration, and has not submitted contemporaneous evidence that it has maintained the beneficiary as an employee. The petitioner did not advance any statement on appeal explaining why additional objective evidence of the claimed employment was not submitted or is somehow unavailable.

Furthermore, the proposed salary for the position was stated as $20,800. This is inconsistent with the beneficiary's tax return forms indicating that he was paid $27,650 and $26,000, respectively, in the two preceding years. It is incumbent on the petitioner to reconcile the obvious discrepancies in the testimony submitted in support of the petition. Moreover, absent a comprehensive description of the beneficiary's means of financial support in the United States, supported by contemporaneous documentation such as certified tax documents, the Service is unable to conclude that the beneficiary had been continuously engaged in any particular occupation for the two-year period. Based on the record as constituted, it cannot be concluded that the director's objection has been overcome.

Beyond the discussion in the director's decision, the petition is deficient on additional grounds. A petitioner must submit its federal tax returns, audited financial statements, or annual reports to establish its ability to pay the proffered wage of $1,500 per month. See 8 C.F.R. 204.5(g)(2). A petitioner must also disclose the number of petitions filed for additional employees and establish the ability to pay the sum of those wages. The petitioner has not satisfied these documentary requirements.

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.