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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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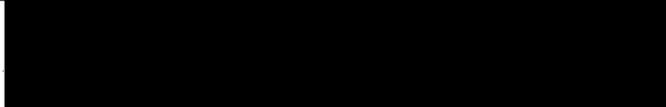
File:

Office: Vermont Service Center

Date:

JAN 30 2003

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for 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), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:



Identifying data deleted to  
prevent identity 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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be remanded to the director for further consideration.

The petitioner is a church that 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 him as a church planting pastor. The director determined that the petitioner had not established its ability to pay the beneficiary the proffered wage at the time of filing the petition.

On appeal, counsel for the petitioner submitted a brief arguing that the petitioner has been paying the offered wage of \$30,000 per year and, at the time of filing the petition, was earning sufficient funds to pay such wage.

The issue to be addressed in this proceeding is whether the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition.

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 the 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 that religious denomination,

(II) before October 1, 2003, 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, 2003, 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;

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

8 C.F.R. 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must describe the terms of payment for services or other remuneration. In addition, 8 C.F.R. 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition.

On appeal, counsel provided a letter dated August 14, 2002, in which the petitioner's district superintendent states that the position offered the beneficiary is a full-time position with an annual salary of \$30,000. The letter also states that the petitioner has had an employment contract with the beneficiary and has been paying the beneficiary the offered amount since September 2001. Counsel provided copies of consolidated statements of the petitioner's financial position and a copy of a Report of Independent Auditors to support the financial statements.

The petitioner's consolidated financial statements indicate that as of "June 30, 2001 and June 30, 2000," the petitioner's total net assets for 2001 was \$2,987,175.44 and for 2000 was \$2,826,522.32. The auditors report indicates that the petitioner's financial statements were audited and conform with accounting principles generally accepted in the United States.

The evidence submitted is sufficient to satisfy the documentary requirement to establish the petitioner's ability to pay the beneficiary the proposed salary. The petitioner has overcome the objection of the director.

Nevertheless, the petition may not be approved as the petitioner has not shown that the beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

This case will be remanded to the director to determine whether the petitioner has met the eligibility requirements under section 203(b)(4) of the Act.

The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.



ORDER:

The director's decision of August 7, 2002, is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision.