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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-98-223-52160 Office: Vermont Service Center Date: AUG 1 2001

IN RE: Petitioner: [redacted]
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: [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

Myra L. Rosenberg

for Robert P. Wiemann, Acting 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 case will be remanded.

The petitioner is a non-profit corporation operating a religious radio broadcasting service. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to be employ him as a "radio chaplin."

The center director denied the petition determining that the petitioner failed to establish that the beneficiary had been continuously carrying on a religious vocation or occupation for the two-year period as required. The director noted that the beneficiary's W-2 tax forms reflected only part-time employment by the radio station.

On appeal, counsel for the petitioner argued that part-time employment is qualifying and cited unpublished administrative decisions of this Service.

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, 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; 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 religious radio station. The beneficiary is a native and citizen of Korea described as a minister of religion having been ordained on April 5, 1990. The beneficiary was granted R-1 status as a religious worker authorized for employment with the petitioner valid from July 1, 1997 to June 30, 2000.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.
>
> (B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested; or

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

At issue in this matter is whether the petitioner has established that the beneficiary has the requisite two years of experience as a minister.

In the case of special immigrant ministers, it was held in Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986) that the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely as a minister in the proffered position.

The petition was filed on August 11, 1998. Therefore, the petitioner must establish that the beneficiary was continuously and solely carrying on the vocation of a minister since at least August 11, 1996.

In this case, the record contains evidence of part-time employment of the beneficiary by the petitioner. The petitioner also indicated that the beneficiary engaged in ministerial activities with a local church.

On review, the petitioner did not provide a comprehensive description of the beneficiary's employment history since his admission to the United States. Absent such a comprehensive description, supported by corroborating documents such as the beneficiary's tax returns, the Service is unable to conclude that the beneficiary had been solely and continuously engaged in his vocation. However, while the evidence of the part-time employment by the petitioner may be violative of the terms of his R-1 status, it is not necessarily fatal to the two-year experience requirement of the instant immigrant petition.

The record will be remanded to allow the petitioner an opportunity to supplement the record and establish that the beneficiary was continuously and solely carrying on the vocation of a minister during the two-year qualifying period.

The record reflects additional deficiencies. A petitioner must establish that it is qualifying organization eligible for special immigrant classification of the alien beneficiary.

8 C.F.R. 204.5(m)(3) states, in pertinent part, 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; or
>
> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

The petitioner did not submit proof of its tax exempt status. There is no evidence that Dong-A Broadcasting is recognized as a tax exempt <u>religious organization</u> as described in sections 501(c)(3) and 170(b)(1)(A)(i) of the Internal Revenue Code. A non-profit radio station, even if organized for religious purposes, would not normally be granted the tax exempt status for churches that is required for classification of special immigrant religious

workers. For this reason as well, the petition may not be approved.

The record will be remanded to afford the petitioner the opportunity to supplement the record and for the issuance of a new decision.

ORDER: The case is remanded for the purpose of a new decision consistent with the above.