U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: EAC-99-025-52434 Office: Vermont Service Center Date: JAN 29 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, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

[redacted]

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

identification data deleted to prevent clearly unwarranted invasion of personal privacy

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 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), to serve as a special assistant. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

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 beneficiary is a forty-two-year-old married female native and citizen of Peru. The petitioner indicated that the beneficiary

entered the United States in an undisclosed manner on October 20, 1994 and had been residing in the United States since such date.

At issue in the director's decision is whether the petitioner has established that the beneficiary had 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 October 28, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from October 28, 1996 to October 28, 1998.

In a letter dated September 29, 1998, the petitioner stated that the beneficiary:

> has been continuo[u]sly serving as a religious worker in a variety of church related activities . . . for two and a half years. Since that time, she has been and will continue to be involved in the catechetical ministry of the parish, working a minimum of 35 hours a week. The salary for Special Assistant begins at $300.00 per week.

In a separate letter, also dated September 29, 1998, the petitioner stated that "because of demographic changes, the parish is in need of a full-time Special Assistant Religious Instruction to serve the growing youth population."

On April 22, 1999, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner stated that:

> since May 1996, the beneficiary has been a full time paid religious worker until the present time. She was paid off the books since she did not have a Social Security number. She will be put in the books, after she receives work authorization and Social Security . . .
>
> We have submitted the financial statements of the Church for the last three years . . . The beneficiary's stipend is included in item number 12 "All operating expenses."

The petitioner submitted a photocopy of its 1998 Parochial Report Form. According to item number 12 of this form, the petitioner spent $200,039.57 on "All Operating Expenses." The petitioner also provided its Treasurer's Report for the year 1998 (as of November 22, 1998). This report gave a detailed listing of the petitioner's expenses, and indicated that the petitioner had spent $18,320.80 on payroll as of that date.

On appeal, counsel states that the beneficiary "has been paid a stipend of $300.00 weekly through the parishes all operating expenses for the past two years, off the books." Counsel submits photocopies of previously-submitted documents and a photocopy of the beneficiary's 1998 income tax return. According to this document, the beneficiary and her husband earned $25,081 in 1998. This document also indicates that the beneficiary's social security number is [redacted]

The statements made, and evidence submitted, in support of this petition have been contradictory and unpersuasive. The statements made by the petitioner when the petition was filed suggested that the petitioner was going to hire a special assistant due to "demographic changes." Subsequent to the director's request for additional information, the petitioner claimed that the beneficiary received an annual salary of approximately $14,400.00 and that she was paid in cash because she did not have a social security number. The petitioner also provided a financial report which indicated that, through the first eleven months of 1998, the beneficiary had received over 70 percent of the petitioner's payroll. On appeal, the petitioner submits the beneficiary's 1998 tax return which indicates that the beneficiary did have a social security number in 1998. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from October 28, 1996 to October 28, 1998. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

Beyond the decision of the director, 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). Also, the petitioner has failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). 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.