



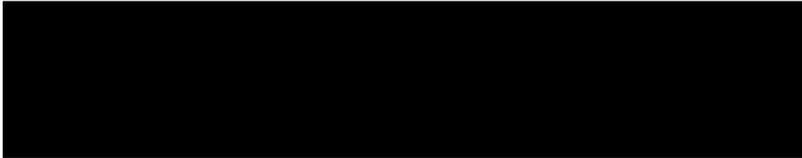
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U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC-00-118-53736 Office: Vermont Service Center Date: 07 JAN 2002

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: 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.

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, and 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), in order to employ him as a "religious worker in different areas of ministry" at an annual salary of \$15,000.

The director denied the petition on the grounds that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification and failed to establish that the beneficiary had had two years of continuous experience in a religious occupation.

On appeal, an official of the petitioner submitted additional documentation.

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 in this matter is a church affiliated with the Southern Baptist Convention denomination. It has demonstrated the appropriate tax exempt status under section 501(c)(3) of the Internal Revenue Code. It did not provide a description of the size of its congregation or the number of employees. The beneficiary is described as a native and citizen of Cuba currently residing in that country.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The petitioner must establish that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

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.

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(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

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

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

On appeal, the petitioner furnished a letter explaining that this is a new position established in consideration of its growing membership. The duties of the position were described as "family counseling, evangelism, visitations, and the like."

The regulation defining a qualifying religious occupation is worded in a broad manner. This is to accommodate the range of religious occupations in various religious traditions. While many denominations have a tradition of lay "evangelism," the Service must look beyond the title of a position. The Service must look at

the duties of the position, the sufficiency of evidence submitted, and the credibility of the claim.

After a careful review, it must be concluded that the petitioner has failed to overcome the director's objection. In churches of average size, lay positions are usually filled on a part-time basis by volunteers who receive some basic instruction in the duties of the position. At issue in this proceeding is whether the proposed position is traditionally a full-time salaried occupation requiring specific religious training in the petitioning church and/or in its parent religious denomination and thereby is a qualifying religious occupation for the purposes of this proceeding.

In this case, the petitioner has conceded that it has never employed a lay religious worker in its past. It claimed that the new position was due to its growing congregation. However, the petitioner failed to provide any description of the size of its congregation or the necessity to employ lay persons full-time to meet the needs of its congregation. Absent a description of the size of the congregation, the nature of the services offered, and the number of members utilizing these services, the Service cannot reasonably conclude that the proposed position is credible as a full-time permanent position.

In addition, the petitioner failed to provide any description of its recruitment process resulting in the job offer to the alien beneficiary. There is no indication that the position was advertised or that other candidates were considered. Any non-profit organization establishing a new permanent salaried staff position normally follows some formal search process approved by its board of directors and it considers multiple candidates prior to making a final selection. The pastor of an individual church is usually not authorized to simply offer permanent employment to a non-resident alien without a formal process and authorization from the governing structure of the church. Absent a description of the process whereby the petitioner created the new position and offered the position to the beneficiary, there is a question as to the credibility of the job offer.

Finally, the petitioner has not provided any documentation from an authorized official of the denomination that such lay positions are traditionally permanent salaried positions requiring some specific religious training. Merely going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner also must establish that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

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 March 9, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least March 9, 1998.

The petitioner originally submitted a translated letter from the beneficiary's church in Cuba stating that he has been "working as a missionary" for the last four years. In response to a request for more evidence, the petitioner furnished an additional letter from the church stating that the beneficiary has been paid the equivalent of US\$200 monthly for his services.

In this case, the petitioner failed to provide any verification of the claim of the beneficiary's foreign employment as a lay religious worker. The petitioner did not provide evidence such as the beneficiary's foreign tax documents, verification from authorized officials of the denomination, or other comparable indicia. The Service has no means to verify the contents of a letter purportedly submitted from a foreign church. Merely going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, supra.

The petitioner also did not explain that this alleged work for the foreign church was engaged in as his occupation. The plain meaning of the term "occupation" is a person's primary endeavor and means of financial support. Absent a comprehensive description of the beneficiary's employment history, supported by objective corroborative documentation, the Service is unable to conclude that the beneficiary has been continuously carrying on any particular occupation, religious or otherwise.

A petitioner also must demonstrate its ability to pay the proffered wage.

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

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence

of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner in this matter submitted copies of its monthly bank account statements and its budget. These documents do not satisfy the regulatory requirement. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the documentary requirement of this provision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.