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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: Texas Service Center Date: JAN 09 2002

IN RE: Petitioner:
Beneficiary: [redacted]

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]

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

Myra L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Texas 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 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 employ him as a minister at an annual salary of $12,000.

The director denied the petition on the grounds that the petitioner failed to demonstrate that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition. The director found that the claim that the beneficiary had been a volunteer with the petitioner, while also attending a university as a full-time student, was insufficient to satisfy the prior experience requirement of this provision.

On appeal, counsel for the petitioner asserted, in part, that the beneficiary had been an ordained minister for more than two years and that he accrued experience despite his student status. Counsel relied on two unpublished administrative decisions of this Service to support his argument.

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 described as an independent church. It submitted documentation that it has the appropriate tax exempt recognition from the Internal Revenue Service. The petitioner did not state the size of its congregation or the number of employees. The beneficiary is described as a native and citizen of Brazil who was admitted to the United States on January 7, 1997, as an F-1 student authorized to attend the Herzing College of Business in Atlanta, Georgia. The petitioner also submitted a "certificate of ordination" reflecting that the beneficiary was ordained as a minister by the petitioning church on May 13, 1997.

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

A petitioner must establish that the beneficiary is qualified as a minister as defined in these proceedings.

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.

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.

In addressing this requirement, the petitioner submitted the aforementioned "certificate of ordination" that it issued to the beneficiary.

The evidence of record is insufficient to establish that the beneficiary is a qualified minister. First, the petitioner has not explained the standards required to be recognized as a minister in its church or shown that the beneficiary has satisfied such standards.

Second, simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. Matter of Rhee, 16 I&N Dec. 607 (BIA 1978). In this case, there is no explanation of the nature of the petitioning church or its practicing of ordaining clergy members. There is no evidence that the beneficiary has any formal theological training in order to qualify as a minister as defined in this proceeding. The petitioner also asserted that the beneficiary was ordained by a similar church in Brazil. However, the record is devoid of any evidence of the beneficiary having any theological training.

A petitioner also must establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

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.

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 in the work of a minister of religion.

The petition was filed on June 13, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least June 13, 1998.

In this case, counsel for the petitioner testified that the beneficiary volunteered as a minister for the petitioning church since May 1997 while also engaged in full-time secular studies as a business student. The petitioner did not provide any estimate of the time the beneficiary purportedly devoted to ministerial duties.

On review, it must be concluded that the petitioner has failed to establish that the beneficiary was continuously and solely carrying on the vocation of a minister for the two-year period. First, as noted above, the record is insufficient to establish that the beneficiary is a minister. Therefore, the petitioner has failed to establish that the beneficiary could have accrued experience in that vocation.

Second, the record reflects that the beneficiary was primarily engaged in business studies during the two-year period. Even if the beneficiary were shown to be a qualified minister, then his full-time secular studies would result in interrupting the continuity of his engagement in a religious vocation. It must be noted that only decisions published and designated as precedents by the Associate Commissioner are binding on Service officers. See 8 C.F.R. 103.3(c). The unpublished decisions relied on by counsel have no precedential value.

Finally, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion at any time during the two-year period or that he would be solely engaged as a minister in the proposed position. Clearly, any secular business study or activity on the part of the beneficiary would detract from his exclusive engagement in a religious vocation for the purposes of this proceeding.

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.

In this case, 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.