

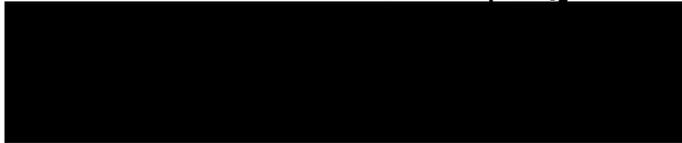


U.S. Department of Justice  
Immigration and Naturalization Service

CA

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



File: EAC-99-065-53711

Office: Vermont Service Center

Date: JAN 09 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:



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 religious organization. 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 pastor at one of its member churches at a salary of \$300 per week, or \$15,600 per year.

The director denied the petition finding that the petitioner failed to establish 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.

On appeal, counsel for the petitioner argued that the beneficiary has been a minister for seventeen years and has satisfied the prior experience requirement.

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 a religious organization operating a number of churches serving the Haitian immigrant community in the New York area. It is affiliated with the General Assembly of Christian Church, Inc. denomination. The beneficiary would serve at one of the petitioner's member churches in Huntington Station, New York.

The beneficiary is a native and citizen of Haiti. The petitioner indicated that he was ordained as a minister on April 10, 1982 by the *Eglise de la Foi Apostolique Marantha* in Haiti. The petitioner stated that the beneficiary was last admitted to the United States on April 9, 1997, as an F-1 student. The record reflects that the beneficiary was granted a change of classification to R-1 religious worker authorized for employment with the petitioner valid from October 8, 1997 to October 7, 2000.

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

A petitioner 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 December 21, 1998. 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 December 21, 1996.

In this case, the petitioner testified that the beneficiary had been employed at its Huntington Station church since October 1997 and submitted copies of his Form 1099 income statements as proof of the claim. The petitioner stated that the beneficiary had been employed as a minister in Haiti from April 1982 until departing for the United States in April 1997.

On review of the record, it must be concluded that the petitioner has failed to overcome the director's objection.

First, the petitioner did not provide an account of the beneficiary's activities in the United States as an F-1 student from April 9, 1997 to October 8, 1997. The record does not establish that the alien was continuously and solely carrying on the vocation of a minister during this six-month period.

Second, there is no verification of the claim that the beneficiary was continuously carrying on the vocation of a minister from at least December 1996 to April 1997. The petitioner submitted letters from the beneficiary's church in Haiti attesting to the fact that he was a minister. The Service has no means to verify such testimony. The evidence is considered, but is insufficient to satisfy the petitioner's burden of proof. Absent corroborative evidence, such as verification from an authorized official of the United States denomination, it cannot be concluded that the beneficiary was considered an ordained minister whose credentials are recognized by the U.S. denomination during that period.

Finally, the petitioner made no specific claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period or that he would be solely engaged as a minister with the new church.

A petitioner also 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.

The petitioner submitted a "certificate of ordination" issued on April 10, 1982 by the *Eglise de la Foi Apostolique Marantha* in Haiti. This document is insufficient to establish that the beneficiary is a qualified minister of religion. 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). The petitioner did not submit a letter from an authorized official of the U.S. denomination verifying the denomination's recognition of his credentials and confirming that he is authorized to perform the duties of a clergy person in its United States member churches.

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 submitted various internal financial summaries of the organization as proof of the church's financial resources. These documents do not satisfy the regulatory requirement. The petitioner has not specified whether the beneficiary would be employed by and paid directly by the Evangelical Crusade Of Fishers Of Men organization or the individual church in Huntington Station. Nevertheless, the petitioner has not furnished either organization'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.