C1

U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: WAC-98-230-50454 Office: California Service Center Date: JUN 18 2002

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: Self-represented

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, California 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 her as a minister.

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 filing of the petition or that she would be engaged solely as a minister in the proffered position. The director noted that the church claimed a congregation of only 49 members, yet had filed petitions for a total of 12 alien ministers, which brought into question the credibility of the job offer.

On appeal, an official of the church stated that they now have 152 members, a two story building, a parking lot accommodating 30 cars, and that they are engaged in missionary work in Mexico and Guatemala.

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 an independent church established in 1998 claiming an affiliation with other small churches in Mexico and Guatemala. The beneficiary is described as a married female native and citizen of Guatemala who last entered the United States on January 15, 1993, without inspection by an immigration officer. The record therefore reflects that the beneficiary has resided in the United States in an unlawful status since entry.

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

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

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).

In addressing this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated February 11, 1998, sufficient to establish that the church was granted the appropriate tax exempt recognition under section 501(c)(3) of the Internal Revenue Code (IRC).

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" dated April 10, 1994, issued by the petitioning church, stating that the beneficiary is a minister.

The evidence of record is insufficient to establish that the beneficiary is a qualified minister for the purpose of special immigrant classification.

The petitioner submitted a statement dated November 9, 2000, stating that the requirements for ordination were being a church member over eighteen years of age who believes in the scriptures and has a desire to preach the Gospel. In order to establish that an alien is qualified as a minister of religion for the purpose of special immigrant classification, 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). A lay preacher is not eligible. 8 C.F.R. 204.5(m)(2). Here, there is no evidence that the beneficiary has any theological education or that the church requires a theological education in ordaining its ministers. The beneficiary must be considered a lay preacher and is ineligible for the benefit sought.

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, 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 in the United States. Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986).

The petition was filed on August 24, 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 August 24, 1996.

In this case, an official of the petitioning church testified that the beneficiary served the church since 1994 and that she received an average of $90 per week for her services.

The director found that the evidence to support this claim consisting of self-produced pay statments and backdated, noncertified federal tax return forms was unpersuasive.[1]

The record is insufficient to demonstrate that the beneficiary has the requisite two years of continuous experience as a minister.

First, as discussed above, the record does not establish that the beneficiary is a minister for the purposes of this proceeding.

Second, the petitioner did not provide a detailed description of the beneficiary's means of financial support in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as certified tax documents, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

Finally, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period or that she would be solely engaged as a minister with the small new church. For this reason as well, the petition may not be approved.

---

[1] It is noted that the pay statements are in the name of [redacted] The petitioner has not established that the [redacted] are one and the same person.

The petitioner also must demonstrate that a qualifying job offer has been tendered.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has not submitted a specific job offer to the beneficiary, has not identified the terms of remuneration, and has not shown that the alien would not be dependent on supplemental employment. Therefore, it has not tendered a qualifying job offer. For this reason as well, the petition may not be approved.

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 church has filed petitions for 12 alien workers. The petitioner must specify the wages offered and provide proof of its ability to pay the sum of those wages. The petitioner submitted noncertified copies of its 1998 tax return reflecting $45,529 in gross revenue and no expenses for wages and salaries. This does not reflect the ability to pay in excess of 12 full-time workers who would not engage in supplemental employment. For this reason as well, the petition may not be approved.

The petitioner bears the burden to establish eligibility for the benefit sought. In reviewing an immigrant visa petition, the Service must consider the extent of documentation and the credibility of that documentation as a whole. The petitioner bears

the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966); Matter of Semerjian, 11 I&N Dec. 751 (Reg. Comm. 1966). Inherently, the Service must consider that the possible rationale for the instant petition is the church's desire to assist an alien member of its congregation to remain in the United States for purposes other than provided for under the special immigrant religious worker provisions. Based on the record as constituted, the petitioner has not adequately demonstrated that it has either the ability or the intention to remunerate the beneficiary in a permanent salaried position or that the beneficiary seeks to enter the United States solely to pursue this vocation.

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.