

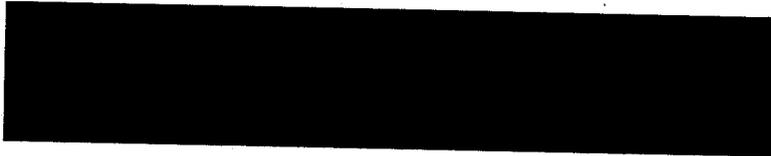


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC-00-053-52301 Office: California Service Center Date: MAY 01 2002

IN RE: Petitioner: [Redacted]
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

Robert P. Wiemann
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The record will be remanded.

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 her as an "evangelist" at a salary of \$1,600 per month.

The director denied the petition on the grounds that the petitioner failed to establish the beneficiary's two years of prior experience required by 8 C.F.R. 204.5(m)(1). In the decision, the director noted that the beneficiary worked in a similar position with an affiliated foreign church and that she was supported by that church, but determined that the petitioner failed to submit "paystubs" or other proof of employment.

On appeal, counsel for the petitioner submitted additional evidence and argued that the beneficiary was employed on a salaried basis by the foreign church and that evidence of that employment was provided.

The petitioner in this matter is a Presbyterian church. The pastor did not identify its specific denominational affiliation. The pastor asserted that the church has a congregation of 100 members with 26 staff positions. The petitioner's financial statement reflects that none of the staff persons are full-time paid employees, and that only the senior pastor is the only paid employee receiving part-time remuneration for his services.

The beneficiary is a native and citizen of China currently residing in that country. Documentation was submitted indicating that she graduated from a Presbyterian seminary in 1991 and has served as an evangelist with Presbyterian churches in that country since such time. The record indicates that the beneficiary served both in a voluntary and a paid capacity. The petitioner asserted that the beneficiary was a full-time paid employee of the Oh Ri Dae Church of Shenyang City, China since December 1997.

The center director's decision is not well grounded in that it both states that the record shows that the beneficiary was supported by the church and then states that there is no proof of that employment. Counsel's submission on appeal addresses the grounds for denial.

Upon a careful review of the record, it must be concluded that the record as constituted is insufficient to establish eligibility on several grounds. Therefore, the record will be remanded for further review and entry of a new decision.

First, the statute provides for special immigrant classification of

three distinct classes of religious worker: ministers, professional workers, and other workers. Each has different eligibility requirements. In various submissions to the record, the petitioner has referred to the beneficiary as an evangelist, which would normally be considered a lay professional position, and as a minister, which would be a ministerial position. The petitioner should be afforded the opportunity to clarify whether it seeks classification of the beneficiary as a minister or as a lay person and then satisfy the remaining appropriate eligibility criteria.

Second, the petitioner has established that it is individually recognized by the Internal Revenue Service (IRS) as a tax-exempt religious organization. However, the petitioner has not established with which, if any, Presbyterian denomination it is affiliated. Section 101(a)(27)(C)(i) of the Act requires that a qualifying alien must have been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States. In order to establish the requisite denominational affiliation with the foreign church, a statement from an authorized official of the denomination is required. 8 C.F.R. 204.5(m)(3)(ii). Statements from officials of the individual petitioning church are considered, but are insufficient to satisfy the burden of proof standing alone. See Matter of Varughese, 17 I&N Dec. 399 (BIA 1980).

Third, the Service has no means to verify the letter from the foreign church attesting to the beneficiary's work experience required by 8 C.F.R. 204.5(m)(1). As noted above, the Service must instead rely on confirmation from an authorized official of the United States denomination. See Matter of Varughese, *supra*.

Fourth, the Service has no means to verify the claim of the individual petitioning church that the position of evangelist is a traditional religious occupation in the denomination pursuant to 8 C.F.R. 204.5(m)(2). As noted above, the Service must instead rely on confirmation from an authorized official of the denomination.

Fifth, 8 C.F.R. 204.5(g)(2) requires a prospective employer to submit its annual reports, federal tax returns, or audited financial statements to demonstrate the ability to pay the proffered wage. The petitioner failed to submit such required documentation. Id.

Sixth, a petitioner must credibly establish its intent to employ the alien beneficiary in the capacity specified in the petition. Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966). Here, the petitioner is a small church with no full-time employees that claims gross annual revenues of \$52,596. The petitioner has not clearly or credibly explained or established its ability or its intent to employ the beneficiary in the capacity specified at an annual salary of \$19,200.

The record will be remanded to afford the petitioner the opportunity to supplement the record. The director shall then enter a new decision.

ORDER: The record is remanded for a new decision consistent with the above.