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U.S. Department of Justice

Immigration and Naturalization Service

identification 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-99-088-50500 Office: California Service Center Date: MAY 06 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

Mym 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 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 a "pastoral assistant" at a salary of $1,500 per month, or $18,000 per year.

The director denied the petition on the grounds that the petitioner failed to establish that the beneficiary had been continuously carrying on a religious vocation or occupation for at least the two years preceding the filing of the petition. The director noted that the beneficiary had been in the United States for approximately four months prior to the petition being filed and it had not been shown that she continued to be engaged in her claimed religious occupation in Korea during that time.

On appeal, counsel for the petitioner argued, in part, that the beneficiary was on a "vacation/sabbatical" during her stay in the United States and that she maintained her foreign employment continuously throughout the two-year period.

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 recognized by the Internal Revenue Service with the appropriate tax exempt recognition. The petitioner did not indicate the size of its congregation or the number of employees. The beneficiary is described as a native and citizen of Korea who was last admitted to the United States on September 12, 1998, as a B-2 visitor. The petitioner submitted a copy of a Form I-797A reflecting approval of a petition for R-1 nonimmigrant classification for the beneficiary as a religious worker authorized for employment with the petitioner. The petition is valid form June 18, 1999 to February 1, 2002.

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 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 January 29, 1999, Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious vocation or occupation since at least January 29, 1997.

The petitioner asserted that the beneficiary had been employed by an affiliated church in Korea, the Wood Cross Community Church, Seoul, Korea, as a pastoral assistant since March 1993. The petitioner submitted a "certificate of experience" to support the claim.

On review of the record, it must be concluded that the petitioner has failed to establish that the prior experience requirement has been satisfied. First, the Service has no means to verify the "certificate of experience" purportedly submitted by an official of the Wood Cross Community Church in Korea. The uncorroborated testimony of an official of the petitioning church is considered,

but is insufficient to satisfy the burden of proof. The petitioner did not provide corroborative evidence such as the beneficiary's foreign tax documents, verification from an authorized official of the United States 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, 14 I&N Dec. 190 (Reg. Comm. 1972).

Second, the petitioner failed to submit the beneficiary's travel documents to verify her alleged date of entry into the United States. Absent such evidence, the petitioner has not established the duration of the beneficiary's "vacation/sabbatical" in the United States.

Third, the petitioner did not provide a comprehensive description of the beneficiary's employment history during the two-year period. The plain meaning of the term "occupation" is a person's primary endeavor and means of financial support. The job duties of the past and proposed position were described as simply teaching Sunday school and conducting Bible study. In comparable churches of average size these are not normally full-time paid positions engaged in as an occupation. 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 a religious occupation as defined in these proceedings.

Based on the record as presently constituted, it cannot be concluded that the petitioner has established that the beneficiary was continuously engaged in a religious occupation from at least January 1997 to January 1999.

Finally, it must be noted that the beneficiary must also be a member of the petitioner's denomination for the same two-year period. 8 C.F.R. 204.5(m)(3)(ii)(A). The petitioner submitted no documentation establishing that there is a formal affiliation between the Wood Cross Community Church and the petitioner's denomination in the United States. 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.

The petitioner in this matter submitted various bank statements. 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.