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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536



File: WAC 01 217 55365 Office: CALIFORNIA SERVICE CENTER

Date: APR 16 2003

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)

ON BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The California Service Center Director denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) 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 him as an evangelist at a monthly salary of \$1,800.

The director denied the petition, finding that the petitioner was not a qualifying religious organization for the purpose of special immigrant classification of any prospective employees. The director further found that the petitioner had failed to establish that it had the ability to pay the proffered wage and that the beneficiary had two years continuous experience in the proffered position.

On appeal, counsel for the petitioner submits additional documentation.

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 founded in May 1991 to serve the Korean community. The beneficiary is a native and citizen of Korea last admitted to the United States on November 16, 1999 as a B-1 business visitor. The petition indicates that the beneficiary has never worked in the United States without authorization.

At issue in this proceeding is whether the petitioner is a qualifying religious organization for the purposes of 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).

To address this requirement, the petitioner submitted a copy of a "statement by domestic nonprofit corporation" filed with the State of California's Secretary of State, and a copy of a California state tax exemption application dated May 15, 1991. The director determined and the AAO concurs that the petitioner failed to establish that it possesses federal tax exempt status.

Another issue raised by the director is whether the petitioner established that it had the ability to pay the proffered wage.

In pertinent part, 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

8 C.F.R. § 204.5(m)(4) further describes the evidence required to establish a job offer: "[t]he documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support."

In a request for additional evidence, the director requested the petitioner to submit evidence of the petitioner's ability to pay the beneficiary's proffered wage. The petitioner failed to provide any evidence in its response to the director's request. On appeal, the petitioner submits financial statements as of December 31, 2001 and a copy of its 2001 federal tax return. The financial statements are not audited as required by the regulations. The single-year tax return shows that the petitioner's expenses exceed its revenue, thus, the petitioner has failed to overcome the director's objection to granting the petition.

The final issue in this matter is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding filing.

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 April 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 26, 1999. To address this requirement, the petitioner provided the Bureau with a letter written by the pastor of the petitioning church that states that the beneficiary has been a member and an evangelist of the petitioning church since his arrival in the United States (November 16, 1999). In a request for additional evidence, the director requested documentation that the beneficiary had been paid for his services. The petitioner failed to submit such evidence. On appeal, the petitioner submits a federal tax return that shows that the petitioner paid wages to only one individual and not to the beneficiary. The petitioner has failed to overcome this objection of the director.

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.