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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

File: WAC 02 031 57369 Office: California Service Center

Date: **AUG 21 2003**

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)

ON BEHALF OF PETITIONER:

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 immigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner 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 a general director of housing and community development.

The director denied the petition, finding the petitioner had failed to establish that the beneficiary has the requisite two years of continuous experience in a religious occupation, and that the offered position qualifies as a religious occupation for the purpose of special immigrant classification.

On appeal, counsel for the petitioner asserts that there is no requirement that the beneficiary's experience must be full-time and salaried employment, and that the beneficiary is performing a traditional religious function as a minister performing works to serve God and people. In support of the appeal, counsel submits a mission statement from the petitioner.

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 bona fide non-profit inter-denominational religious organization established in 1994. It states that its major activities are focused on the evangelizing of the Gospel and providing educational and social services to needy Christian pastors, evangelists, missionaries, and other Christian laymen working in a missionary capacity in the United States and overseas.

The beneficiary is a native and citizen of Korea who initially entered the United States as a nonimmigrant B-2 visitor on or about March 2000. He subsequently submitted an application for change of nonimmigrant status to that of a nonimmigrant religious worker (R-1). His application was approved by the Bureau on June 29, 2001, valid until February 28, 2004.¹

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

The first issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for 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.

The petition was filed on October 19, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation or vocation since at least October 19, 1999.

The record reflects the following regarding the beneficiary's work history:

- from March 18, 1989 until March 15, 2000, he was

¹ An alien with at least two years membership in a religious denomination may qualify for nonimmigrant R-1 classification under section 101(a)(15)(R) of the Act without a showing of prior work experience. For special immigrant classification under section 101(a)(27)(C) of the Act, the alien must also establish at least two years of experience in the position being offered.

employed as an evangelical pastor at the Shin Ae Church in Korea;

- from March 2000 to February 2001, he was a volunteer evangelist-pastor at the Hacienda Full Gospel Church in Lancaster, California;
- from February 2001 to July 2001, he was a volunteer evangelist for the petitioner; and
- from July 2001 to the date of filing the petition, he was employed by the petitioner at a monthly salary of \$3,000, including housing.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963); *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those

past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To be otherwise would be outside the intent of Congress.

In this case, the record reflects that the beneficiary performed voluntary, non-salaried services from March 2000 through July 2001. For the reasons discussed above, such service does not constitute continuous experience in a religious occupation for the two-year period immediately preceding the filing date of the petition. For this reason, the petition may not be approved.

The second issue to be addressed in this proceeding is whether the petitioner has established that the proposed position constitutes a qualifying religious occupation or vocation for the purpose of special immigrant classification.

8 C.F.R. § 204.5(m) (2) states, in pertinent part, that:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation or vocation as defined in the regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

In support of the petition, the petitioner submitted a letter, dated September 25, 2001, stating that:

As the General Director of Housing and Community Development Division, [the beneficiary] will direct programs in order to provide housing and repair works to homeless and low income public for an evangelical purpose. He will also develop programs to assist missionaries in China and Ethiopia.

In response to the director's request for additional information concerning the duties of the proposed position, counsel for the petitioner stated:

The petitioner is a religious and charitable organization. Its strategies [sic] to spread Gospel of Jesus Christ through "Micro Community Development.[" It is the corporative [sic] education system to train local people to become Christian leaders in their own community.

The Beneficiary will assist and coordinate the petitioner's ministry as a professional religious worker. Also the beneficiary has a profound knowledge of soil fertilizer analysis and horticultural management. Will develop housing projects [sic] plans, development status reports, site inspection reports. He will visit and inspect housing sites.

Will research and develop agricultural mission plans as a strategy to evangelize undeveloped countries and local communities including Mainland China and some African countries. Will communicate [with] overseas missionaries to develop those plans. Will travel overseas countries to develop those plans and confer with individuals on-sites [sic] as to selection of crops, vegetables, plants and soil fertilizers. Will network to provide technology with other professional volunteers. Will preach sermon at the service and lead the prayer meeting.

The director determined that the petitioner had failed to establish that the proffered position related to a traditional religious function.

On appeal, counsel asserts:

FOR TRADITIONAL RELIGIOUS FUNCTION issue, the beneficiary HAS BEEN PERFORMING in R-1 religious worker status and [W]ill perform THE VERY TRADITIONAL RELIGIOUS FUNCTION. His job title of General Director of Housing and Community Development may have been confused [sic] the adjudicating officer. The beneficiary's various job duties that are involved in housing and farming projects are part of [the] evangelical mission of the petitioner. The very purpose of these projects are [sic] to

evangelize non-Christian communities and anti-Christian nations like mainland China through these means of farming and housing projects. Mainland China, North Korea, Indonesia and many former Russian union countries are persecuting missionaries who do not permit them to work as missionarie [sic] in their countries. That is why many missionaries must represent themselves such as English teacher, Medical Practitioner, Trader, Student for their languages and farming technologists. All of these other works are purported to secure their lawful and safe stay there and evangelize the nations. This evangelism is the very traditional religious function. The petitioner, Via International Alliance, has developed plans that instill farming technology to help shortage of crops and food assistance to improve housing shortage. These plans have proven to be very effective tools to reach out the nations on target for evangelism[.] The beneficiary has been carrying out those projects and has been supporting missionaries in [sic] overseas. He has been and is a religious minister performing works to serve God and people.

After a review of the record, it is concluded that the petitioner has failed to establish that the position of general director of housing and community development constitutes a qualifying religious occupation. Counsel's assertion that the offered position constitutes a traditional religious function because the beneficiary is a religious minister performing works to serve God and people is not persuasive. The duties of the position are primarily secular in nature and are not shown to be dependent on any religious background or prescribed theological education.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individuals qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

In review, the petitioner has failed to overcome the director's objections to approving the petition.

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 met that burden.

ORDER: The appeal is dismissed.