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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 MASS, 3/F

Washington, D.C. 20536



File:



Office: VERMONT SERVICE CENTER

Date:

AUG 28 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:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

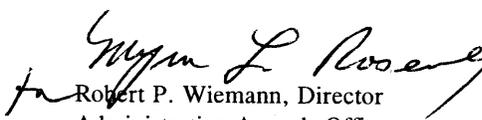
INSTRUCTIONS:

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 her as an assistant pastor and missionary at an annual salary of \$13,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously employed in the proffered position for the two years immediately preceding the filing of the petition.

On appeal, counsel for the petitioner asserts that the Bureau failed to give proper consideration to all the evidence submitted.

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 affiliated with the Pentecostal movement. The beneficiary is a native and citizen of the Dominican Republic. The evidence on the record indicates that the beneficiary entered the United States as a C-1 nonimmigrant alien in transit on May 16, 1992.

The sole issue raised by the director that must be addressed in this proceeding is whether the petitioner established that the beneficiary was continuously engaged as an assistant pastor and missionary 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.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the occupation of assistant pastor since at least April 30, 1999.

In a letter dated October 3, 2000, an official of the petitioning church wrote that the beneficiary had served a missionary at its "main church" from 1997 to present while maintaining a minimum regular schedule of 35 hours per week. In response to the director's request for additional evidence, the petitioner provided the Bureau with copies of the beneficiary's Form 1099 (Miscellaneous Income Statements) for the years 1998, 1999 and 2000.

The director found that in the absence of W-2's (Wage and Tax Statements), the evidence was insufficient to establish that the beneficiary had been continuously engaged in the religious occupation for the preceding two years

In review, the petitioner has overcome the director's objection. The beneficiary's Forms 1099 and income tax returns for the years 1998, 1999 and 2000 show that the petitioner paid the beneficiary \$13,000 in 1998 and in 1999, and \$11,700 in 2000. The petitioner provided the Bureau with evidence that the tax identification number on the Forms 1099 belong to the beneficiary. The evidence is sufficient in demonstrating that the beneficiary had been continuously employed by the petitioning organization in a religious occupation for the two years immediately preceding the filing of the petition. Consequently, the petition may be approved.

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 sustained that burden.

ORDER: The appeal is sustained.