C1

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 2 2 2003

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)

ON BEHALF OF PETITIONER:

[redacted]

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 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 dismissed.

The petitioner is a church affiliated with the Pentecostal denomination. 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 Sunday school teacher for adults.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition on a full-time basis, or that she would be a full-time religious worker in the job offered. The director further found that the petitioner failed to establish that it had the ability to pay the proffered wage and the salaries of the other six religious workers for whom the petitioner had petitioned.

On appeal, counsel for the petitioner submits a brief asserting that the petitioner established that it has the ability to pay the proffered wage on the basis of income projections. Counsel further asserts that the petitioner substantially modified the beneficiary's schedule to reflect a 36-hour workweek. Finally, counsel argues that the director failed to properly evaluate 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 beneficiary is a 51-year old native and citizen of Nigeria. The petitioner indicated that it has 75 to 100 members in its congregation. It submitted evidence that it has the appropriate tax exempt recognition. According to the Bureau's records, the beneficiary last entered the United States as a B-2 nonimmigrant visitor for pleasure on May 14, 1998.

At issue 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 July 16, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least July 16, 1999.

Initially, the petitioner submitted a letter from its Leader-in-Charge stating that the beneficiary had been a member of the petitioning church for the past three years and "has since volunteered herself to teaching at the Adult Sunday School." The petitioner further stated that when the beneficiary's employment begins, she would be given free room and board plus a salary. In response to a request for additional evidence, the petitioner informed the Bureau that the beneficiary "works as a volunteer full-time for the church [and] has been working as a part-time newspaper deliverer." The petitioner further indicated that it had offered the beneficiary a twenty-hour a week job.

The director concluded that the petitioner had failed to establish that the beneficiary had been performing her duties on a compensated full-time basis continuously for the two-year period immediately preceding the filing of the petition.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding

filing. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify.

In review, the evidence is insufficient to establish that the beneficiary satisfies the two-year qualifying experience requirement. In the absence of W-2's and certified income tax returns, the petitioner failed to establish that it had employed the beneficiary for the requisite two years.

The director denied the petition, in part, finding that the petitioner failed to provide sufficient evidence of its ability to pay the beneficiary. On appeal, counsel for the petitioner asserts that the petitioner had income of $36,300 in 2000 and projected incomes for 2002 and 2003 at $100,000 and $130,000.

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 evidence on the record includes a financial statement indicating that the petitioner had total revenues of $36,300 and total expenses of $33,800 in the year 2000, leaving a net income of $2,500. The financial statement projects that its income will increase four-fold over the span of three years.

According to Bureau records and the petitioner's own admission, the petitioner has filed immigrant visa petitions for six other religious workers. The petitioner failed to demonstrate how it had the ability to pay the beneficiary's wage, let alone the wages of six additional workers.

In any event, the petitioner failed to provide audited financial statements or other financial records as required in the relevant regulation.

The petitioner also must demonstrate that a qualifying job offer has been tendered.

8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner initially indicated that it was offering the beneficiary a twenty-hour a week job. On appeal, the petitioner has attempted to amend the petition to provide for a thirty-six hour a week job. In the first instance, the petitioner has not shown that the alien would not be dependent on supplemental employment. Therefore, it has not tendered a qualifying job offer. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. *Matter of Izummi*, 22 I&N 169 (Assoc. Comm., 1998). Accordingly, the petitioner's offer to modify the beneficiary's work schedule may not overcome this issue as a ground for denial of 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 sustained that burden.

ORDER: The appeal is dismissed.