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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

[Redacted]

File: [Redacted] Office: TEXAS SERVICE CENTER

Date: **JUL 02 2003**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant 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]

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
h Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a youth group Bible teacher. The director determined that the petitioner had not established that the job constituted a qualifying position. The director also found that the beneficiary's unpaid volunteer work cannot satisfy the requirement for prior employment experience, and that the beneficiary's admission as a nonimmigrant visitor rather than as a religious worker disqualified the beneficiary for consideration for the immigrant classification sought.

On appeal, counsel states that a brief is forthcoming within 30 days. To date, over ten months after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands. Counsel's arguments and exhibits on appeal address only the issue of unpaid volunteer work.

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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “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.”

In denying the petition, the director stated “the regulation . . . requires that the beneficiary enter the United States for the purpose of working for the religious organization. However . . . the beneficiary entered as a visitor and then later decided to ‘stay in this country.’” The director does not specify which regulation contains this requirement. The regulations at 8 C.F.R. § 204.5(m) do not contain the word “enter,” and the word “entry” appears only once, in an unrelated context.

It appears, therefore, that the director was referring to the statutory language at section 101(a)(27)(C)(ii) of the Act, which defines a special immigrant religious worker as an alien who “seeks to enter the United States” to work as a minister or other religious worker. The director determined that, because the beneficiary entered the United States as a visitor rather than as a religious worker, the beneficiary therefore cannot qualify for the immigrant classification sought.

The director’s interpretation of the phrase “enter the United States” is in conflict with published, promulgated policy. Supplementary information published with the final rule implementing changes to 8 C.F.R. § 204.5(m)(1), published at 60 Fed. Reg. 29751 (June 6, 1995), states in pertinent part:

Section 101(a)(13) of the Act provides that an “‘entry’ means any coming of an alien into the United States.” Reading section 101(a)(27)(C)(ii) of the Act in conjunction with section 101(a)(13) of the Act, it is clear that not only must the religious worker apply for admission to the United States as an immigrant before October 1, 1997, but he or she must actually seek to “come into,” i.e., arrive in the United States with an immigrant visa before October 1, 1997.¹

From the above interpretation, it is clear that the statutory language stating that the alien “seeks to enter the United States” as a religious worker refers not to the alien’s first admission into the U.S., but rather to the alien’s adjustment of status or entry under an immigrant visa. Furthermore, the statutory definition refers to “an immigrant who . . . seeks to enter the United States.” An alien seeking an immigrant classification is, by definition, not yet an immigrant, and the phrase “seeks to enter” clearly applies to a future event, rather than an alien’s past admission into the United States. The alien’s prior lawful admissions into the U.S. are without consequence, provided the alien intends to enter the U.S. as a religious worker upon becoming an immigrant. There is no statutory or regulatory requirement that an alien seeking classification as a special

¹ The 1997 dates above have since been extended to 2003.

immigrant religious worker must have initially entered the U.S. as a nonimmigrant religious worker.

For the above reasons, we withdraw the director's finding that the beneficiary's nonimmigrant classification at the time of his admission is a disqualifying factor.

The next issue to be addressed concerns the beneficiary's work as an unpaid volunteer rather than as a salaried employee.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on February 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a Bible teacher from February 27, 1999 to February 26, 2001. The petition indicates that the beneficiary last entered the United States on April 29, 1999 as a B-2 nonimmigrant visitor, and therefore the beneficiary was with the petitioner for most of the two-year qualifying period.

The petitioner, through its pastor, Hyun Ahn, indicates "we intend to pay [the beneficiary] a salary of \$1,200 per month" once the beneficiary is legally authorized to work in the U.S., but up until this time the beneficiary "has been working for our church as a full time volunteer." In later correspondence, the petitioner has stated that "[o]ur church provided food and gas for [the beneficiary] as compensation for his volunteer work."

The director informed the petitioner that "[a] lay person volunteering with his or her religious organization is considered an expression of faith, rather than engagement in an occupation." In response, counsel has submitted documentation from February 1998, indicating that an unpublished appellate decision indicates that "unpaid volunteer work can count [as qualifying employment] as long as it essentially includes the same duties and that the majority of all time spent by alien is within these duties." The document does not indicate that the above language derives from the appellate decision. Rather, the appellate decision indicated that work done "on a part-time volunteer basis" is not qualifying employment. The implication, apparently, is that because the appellate decision only ruled out part-time volunteer work, it therefore does not preclude full-time volunteer work. Without the full text of the unidentified decision, it is difficult to ascertain the context of the short excerpt provided in the document (which was prepared by the

American Immigration Lawyers Association rather than by the Immigration and Naturalization Service). In any event, an unpublished decision has no force as precedent.

In denying the petition, the director acknowledged the petitioner's submission of the above document, but stated "the Service interprets the regulations to require that the beneficiary [must] have been [engaging in] salaried employment." On appeal, the petitioner submits a second copy of this same document, without discussing or even acknowledging the director's rebuttal of that document.

With regard to the issue of whether the petitioner's volunteer work constitutes qualifying prior employment, a related issue surfaces upon consideration of the record. We note that the statute and regulations require that the beneficiary have been continuously employed during the two years immediately preceding the filing of the petition. Because the petition was filed on February 26, 2001, the petitioner must establish the beneficiary's continuous employment from February 27, 1999 onward. The record indicates that the beneficiary's last day of employment in Korea was April 18, 1999. The I-140 petition form indicates that the beneficiary entered the United States on April 29, 1999, eleven days after he ceased working in Korea.

The beneficiary has stated that he had traveled to the United States in order to visit with relatives, and he attended the petitioning church during his visit. He states that he decided to stay in the U.S. and work for the church "[b]ecause I saw a great need and felt led to be a Bible Teacher for this church." Thus, the beneficiary's version of events suggests that the beneficiary was, at first, simply a member of the petitioner's congregation, who eventually came to realize that the petitioner was in need of his services.

The beneficiary, in his statement, did not specify when he began working for the church. The petitioner, however, has indicated that the beneficiary has worked for the church "since April 1999." As noted above, the beneficiary arrived in the United States on April 29, 1999. The petitioner thus claims that the beneficiary began not only worshipping at the petitioning church, but working there as well, within 48 hours of his arrival in the United States. April 29, 1999, was a Thursday, and the month of April ended on Friday the 30th. Therefore, according to the petitioner's version of events, the beneficiary cannot possibly have attended even a single Sunday service at the church before deciding to work there full-time. This version of events also indicates that the petitioner entered the U.S. on April 29, 1999 intending only to visit relatives, but by the next day he had made the major decision to permanently abandon his residence in Korea in order to stay in the United States and work, with no compensation except food and gasoline, at the petitioning church.

For the above reasons, it is difficult to reconcile the two versions of events offered by the petitioner and by the beneficiary, regarding the circumstances leading to the beneficiary's working for the petitioner. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective

evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In the absence of contemporaneous documentation of some kind, we cannot conclude that the petitioner has credibly established that the beneficiary began working for the petitioning church in April 1999. Even if we were to accept volunteer work as "employment," the petitioner has not documented or reliably established a credible starting date for the beneficiary's work. It necessarily follows that the petitioner has failed to establish the beneficiary's continuous employment during the two years beginning February 27, 1999 and ending February 26, 2001.

The last basis for denial in this proceeding is whether the petitioner has made a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States.

In a letter submitted with the petition, [REDACTED] pastor of the petitioning church, has offered this description of the beneficiary's work: "[the beneficiary] has been authorized by our church to serve as a Youth group Bible Teacher since April, 1999. [The beneficiary] will be preparing standard curriculum for the Youth Group, determining adequate teaching materials for the group, and organizing special events for the group."

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. 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. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. Persons in qualifying religious occupations must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The documentation in the initial submission that relates to the beneficiary's education or training is a certificate indicating that the beneficiary "is a graduate of Tokyo Golf College," and that his "Major Field" was in the "Department of Golf." The record does not indicate that the beneficiary has had any specialized religious training that would distinguish him from a dedicated lay member of the congregation, or that the petitioner's denomination traditionally considers the beneficiary's work to be a paid, full-time occupation rather than an activity traditionally performed on a volunteer basis by members of the congregation.

The director, in denying the petition, stated “[t]he evidence does not detail the beneficiary’s qualifications as a Bible Teacher, other than Sunday School teacher.” Indeed, a certificate from the church in Korea that had previously employed the beneficiary indicates that the beneficiary was a “Teacher of Sunday School.” On appeal, counsel does not address or contest this finding.

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 individual’s qualifications to receive benefits under the immigration laws of the United States rests within 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).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.