

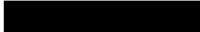
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

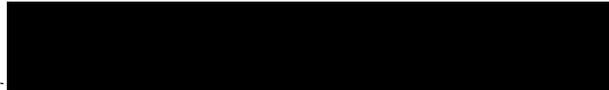
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536



File:  Office: VERMONT SERVICE CENTER

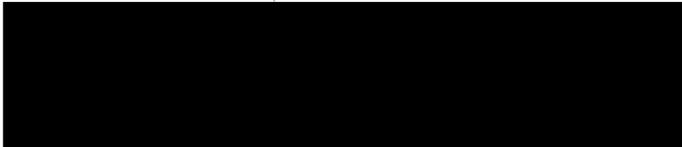
Date: JUL 02 2003

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, 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 Methodist denomination. It seeks classification of the beneficiary as a special immigrant minister 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 minister.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously engaged as a religious worker for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner asserts that there is sufficient evidence on the record to establish that the beneficiary has the two years of qualifying experience.

The record of proceeding consists of a petition and supporting documents, the director's request for additional evidence and the petitioner's response, the director's decision, an appeal, and brief.

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 is a Methodist church that was established in 1919. The beneficiary is a native and citizen of India. The evidence on the record indicates that the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on February 8, 1999 with authorization to remain until August 7, 1999.

The primary issue to be addressed in this proceeding is whether the beneficiary had been continuously engaged as a minister for the two-year period immediately 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.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

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

In this case, an official of the petitioning church wrote the Bureau that the beneficiary served as an assistant pastor at the Mennonite Brethren Church in Hyderabad, India from March 1995 until February 1999. The petitioner provided the Bureau with an undated letter from an official of the United Telugu Christian Fellowship stating that the beneficiary had been working as a full-time assistant pastor from March 1999 to the present.

In a request for additional evidence, the director requested the petitioner to submit a detailed listing of the beneficiary's duties, the commencement and termination dates of employment and the time spent per week performing those duties. The director also asked for evidence that explains how the beneficiary supported himself if the past experience was gained on a volunteer basis. The director further asked for a letter stating how the alien will be paid. In response, the petitioner was vague when describing the

beneficiary's work experience in the United States. The petitioner wrote that:

During the period of March 1999 - April 30, 2001 (and till the present) [the beneficiary] was (and currently is) an active member of the United Telugu Christian Fellowship Church, New York, and a regular partaker of the Methodist church [beneficiary]. As a member of this church, he was actively involved in music and worship ministry, outreach ministries among Asian Indians, etc.

The record also contains an undated letter written by an official of the United Telugu Christian Fellowship that states that the beneficiary conducted Sunday worship services, fasting prayers, youth meetings and counseling, choir and music practice.

The petitioner failed to provide the Bureau with specific information regarding the nature of the beneficiary's job duties, the amount of time spent on these duties and whether he was ever compensated for his services.

The director found that the evidence on the record insufficient to establish that the beneficiary has the required two years of qualifying experience. The AAO concurs. In the absence of corroborating evidence such as certified tax documents for the entire two year period immediately preceding the filing of the petition, the petitioner failed to establish that the beneficiary has the two-years of qualifying experience.

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. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.