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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

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BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal priv

[redacted]

JUL 03 2003

File: [redacted] Office: California Service Center Date:

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: SELF-REPRESENTED **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, 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 her as a priest.

The director denied the petition finding that the beneficiary's claimed service with the petitioner did not satisfy the statutory requirement that she had been continuously carrying on a full-time salaried religious occupation for the two-year period immediately preceding the filing date of the petition.

On appeal, the petitioner states that the beneficiary's prior work for it was on a volunteer basis because she did not have a work permit or social security card; that the beneficiary was paid for her work indirectly through donations to the organization; and that although she did not work full-time, arrangements can be made for her to do so in the future. The petitioner asks that the petition be reviewed as it is trying to help the beneficiary, whom it describes as a very kind and generous lady in her late 60's who wants to be a part of its organization.

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 describes itself as a small prayer club of the Hindu faith. The beneficiary is a native and citizen of Fiji who last entered the United States as a nonimmigrant visitor on February 28, 1999, with authorization to remain until June 25, 2000.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary has been continuously engaged in a religious occupation for the two-year period beginning on April 30, 1999.

The issue to be examined in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous work experience in the proffered position.

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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 term "continuously" is not new to the context of religious workers. In 1980 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 studies. [*Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).]

In this case, the petitioner has asserted that the beneficiary has served on a volunteer basis from April 1999 to April 2001, in less than a full-time capacity. Such service does not constitute continuous experience in a religious occupation. The Bureau is unable to conclude that the beneficiary has been engaged in a full-time religious occupation during the two-year qualifying period. Therefore, the appeal will be dismissed.

Beyond the decision of the director, the petitioner also must demonstrate the following:

(1) the beneficiary was a member of the religious denomination of the petitioning organization during the two-year period preceding the filing date of the petition;

(2) the petitioner has extended a qualifying job offer to the beneficiary;
(3) the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition;
(4) the beneficiary is qualified to engage in a religious vocation or occupation; and
(5) the petitioner qualifies as a bona fide nonprofit religious organization.

As the appeal will be dismissed on the grounds discussed, these issues need not be examined further at this time.

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 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).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.