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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



File:  Office: VERMONT SERVICE CENTER

Date: *10/11/07*

IN RE: Petitioner:
Beneficiary:



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:



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 employment-based immigrant visa petition was denied by the Director, Vermont 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 missionary. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a missionary immediately preceding the filing date of the petition.

On appeal, counsel asserts that the director failed to consider the beneficiary's prior experience as a missionary in Trinidad.

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.”

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 May 3, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a missionary from May 4, 1999 to May 3, 2001.

In a joint letter accompanying the petition, several officials of the petitioning church assert that the beneficiary “has been with us for the pass [sic] two and a half years working in the ministry as a missionary. . . . We have been supporting [the beneficiary] and her family for the pass two and a half years with room and board and living allowance.”

The petitioner included various certificates pertaining to the beneficiary’s training. One certificate indicates that the petitioner ordained the beneficiary as a missionary on March 20, 1999, but this certificate does not establish continuous full-time employment.

The director requested additional evidence, because the initial submission contained no evidence to corroborate the petitioner’s claim regarding the beneficiary’s past employment. In response, the petitioner submitted a new letter from Rev. [REDACTED] pastor of the petitioning church, indicating that the church has “supported [the beneficiary] for the past four years financially, for the work she has done and is doing for the church. The amount of \$215.00 a week is given to her at this present time.” The petitioner also submits a copy of a certificate, also signed by Rev. [REDACTED] indicating that the beneficiary “completed a course in basic Bible knowledge” in 1997.

The director denied the petition, stating that the petitioner has “not submitted any evidence to show that [the beneficiary] has been working in a religious full time job for the past two years. There is no physical evidence such as cancelled checks, pay stubs or W-2 forms.”

On appeal, counsel states that a brief is forthcoming within 30 days. To date, nearly eleven 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 states that the director “failed to take into consideration the beneficiary’s past experience in Trinidad as a missionary of the congregation.” Prior to the appeal, the petitioner had never

indicated that the beneficiary had any experience in Trinidad. The director cannot reasonably be faulted for having “failed to take into consideration” a claim that was never submitted for such consideration. The beneficiary, moreover, has been in the United States since July 1996, nearly five years prior to the petition’s May 2001 filing date. The statute and regulations require evidence of employment during the two years “immediately preceding” the filing of the petition, i.e. from May 1999 to May 2001. Employment before May 1999, whether in the U.S., in Trinidad, or elsewhere, does not immediately precede the filing date and, thus, cannot compensate for the lack of evidence of employment during the relevant qualifying period.

The petitioner submits copies of previously submitted documents and a new letter attesting to the beneficiary’s work as a missionary in Trinidad during an unspecified period of time. The submission on appeal contains nothing to overcome, or even to contest, the director’s finding that the petitioner has produced no contemporaneous documentation of the beneficiary’s claimed employment during the relevant two-year period.

Review of the record reveals an additional issue. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization’s assets and methods of operation and the organization’s papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner must either provide verification of the church’s individual exemption from the U.S. Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution. The petitioner in this matter failed to provide such documentation, except for its articles of incorporation. The petitioner has submitted documentation of exemption from New York state and local taxes, but no comparable documentation to show exemption from federal taxation. A letter from the IRS indicates that the petitioner has been assigned an employer identification number. This same letter instructs the petitioner “[i]f you want to receive a ruling or a determination letter recognizing your organization as tax exempt, you should file Form 1023/1024.” There is no evidence that the petitioner has followed this instruction. This evidentiary deficiency would have been sufficient to warrant denial of the petition even if the director had not denied the petition based on a different deficiency.



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.