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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

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 16 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]

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 Church of Christ denomination. 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 him as a religious translator and missionary.

The director denied the petition, finding that the petitioner failed to establish that the offered position qualifies as a religious occupation for the purpose of special immigrant classification, and that the beneficiary has had the requisite two years of continuous experience in a religious occupation. The director further found that the petitioner failed to establish that it had the ability to pay the proffered wage.

On appeal, counsel for the petitioner submits a 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 beneficiary is a 43-year old citizen of Russia. On the Form I-360 petition, the petitioner indicated that the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on November 26, 1996. According to the Bureau's database, the entry data provided by the petitioner for the beneficiary relates to the beneficiary's son. The beneficiary's date and manner of entry is undocumented.

The first issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

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 the regulations. 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.

Initially, the petitioner merely indicated that it was filing a petition for a religious worker for the beneficiary and failed to state the beneficiary's job title or duties. In a response to the director's request for additional evidence, an elder of the petitioning church wrote that it was "petitioning on [the beneficiary's] behalf to employ him in the capacity of a religious English-Russian translator." The church elder described the position as follows:

> Job description. A religious English-Russian translator must be able to put English Bible study courses (video, audio, and written correspondence) as well as other religious video, audio, and written materials into the Russian language and translate all the recipients' responses back into English. It is a position for a person who is a faithful and evangelically active member of the [C]hurch of Christ

> and who speak English and Russian fluently. The position requires a person to possess some teaching skills . . . . All video and audio translations should be delivered in the spirit as applied to our religion.
>
> We believe the proposed services qualify under the law regarding immigrant religious workers. The activity of a translator relates to a traditional religious function of performing Christian missions and lies properly within the evangelism framework of the Waldorf [C]hurch of Christ.

The petitioner supplemented the record with an excerpt from the Bible that states that God "gave some . . . evangelists . . . for the work of the ministry . . . ." The petitioner provided a partial copy of a commentary on the New Testament that defines evangelists as those "supplied with the gifts to go into destitute fields to make known the gospel." The petitioner also provided the Bureau with classified advertisements for ministers and evangelists. Finally, the petitioner provided the Bureau with a partial copy of a publication of its denomination that states that:

> among those churches [in the denomination] which support the concept of using a local salaried evangelist or minister, most use him in the pulpit. Larger churches are likely to use additional salaried men as "associates," who work specifically with youth activities, counseling, and religious education. Many churches support financially an American missionary and one or more full-time national preachers overseas. There is a widespread practice of providing partial support for part-time ministers.

The director determined that the record is insufficient to establish that the position of "religious translator and missionary" qualifies as a religious occupation. The director found that the petitioner failed to establish that the position is traditionally a permanent salaried position or that the duties of the position require specific religious training.

On appeal, counsel for the petitioner asserts that the pertinent regulation expressly lists religious translator as a religious occupation.

Counsel's argument is not persuasive. The job title is not dispositive. The Bureau evaluates each petition on a case-by-case basis.

The petitioner stated that the petitioning church does not provide full-time monetary support for its missionaries. The published literature provided by the petitioner fails to provide that a religious translator is a traditional position within the

denomination. Here, the petitioner failed to establish that the position of religious translator and missionary is traditionally a full-time salaried occupation within the denomination.

The next issue to be addressed 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 August 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least August 26, 1999.

The petitioner submitted a letter from one of its Elders, stating that:

> The [C]hurches of Christ have no missionary societies, as do other religious groups, to provide full time monetary support for missionaries/religious brothers. Congregations of [C]hurches of Christ support their missionaries/religious brothers from their member's weekly free will offerings.
>
> * * *
>
> [The petitioning church] has supported [the beneficiary] in a constructive way. By no means, was it payment or remuneration for his religious service in the vocation of a religious brother. In fact, the support of him from the church was fairly constant and independent of his religious service or achievements. The aforementioned statements can be supported by the fact that the [petitioning church] paid one-half of [the beneficiary's] son's school tuition from March 1, 1999 through April 1, 2001, which totaled $3,268. Also, the church provided food from the food pantry as well as perishable foods, clothing, and gasoline on a fairly constant basis.

The director determined that the petitioner had failed to establish that the beneficiary has the required two years of continuous experience in a qualifying religious occupation in the absence of any evidence to show that the beneficiary had been paid for his services.

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.

The legislative history of the religious worker provision of the Immigration Act of 1990[1] states that a substantial amount of case had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. *See* H.R. Rep. No. 101-723, at 75 (1990).

In *Matter of Sinha,* 10 I&N Dec. 758 (Reg. Com. 1963), the Commissioner determined that if the beneficiary were to receive no salary for church work, he would be required to earn a living by obtaining other employment. In analogous reasoning, the Bureau determines that unpaid experience does not qualify as the beneficiary must have sought outside employment to support himself. Further, without income tax returns and W-2's, the Bureau is unable to determine how and whether the beneficiary has been employed.

The director denied the petition, in part, finding that the petitioner failed to provide sufficient evidence of its ability to pay the beneficiary. The petitioner failed to address this issue on appeal.

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 petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements that are current as of the date of filing the petition. Therefore, the petitioner has not satisfied the documentary requirement. For this reason as well, the petition may not be approved.

In review, the petitioner has failed to overcome the director's objection to approving the petition.

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[1] Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990).

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.