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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]

JUL 17 2003

File: [redacted] Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 the pastor in charge of the petitioner's Spanish-speaking offshoot, Familia de Cristo Church. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

On appeal, the petitioner submits additional evidence. Counsel argues that the beneficiary has served as a minister since 1990, and that the beneficiary performed qualifying work as a minister prior to his ordination in 1999.

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 April 27, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister from April 28, 1999 to April 27, 2001. The petition indicated that the beneficiary last entered the United States on October 7, 1997 as an R-1 religious worker.

Reverend [redacted] superintendent of the petitioning church, states:

> As the Pastor in Charge, [the beneficiary] will have the normal duties associated with a minister. . . . [The beneficiary] will be authorized by the Church to perform the full range of minister's duties. . . .
>
> [The beneficiary] is well qualified for the position of Pastor in Charge. His academic record is more than adequate for the position in question. [The beneficiary] graduated from the National Central School of Commercial Sciences, Guatemala City, Guatemala as a Certified Accountant in November 1973.
>
> In 1990, [the beneficiary] was a participant [in] the Nazarene Theological Institute of Guatemala's Saturday Theological Program. During 1996 he also participated in the Institute's graduate program. He completed studies in the Seminary's Faculty Program and the Diploma Program of Christian Ministry provided by the Nazarene Center of Theology Studies. [The beneficiary] was ordained on July 20, 1999. . . .
>
> He began his ministerial career and affiliation with the denomination and his employment in January, 1990 as a pastor at the Mission of Minerva Hills Church of the Nazarene in Colinas de Minerva, Guatemala. This employment continued to December, 1996.

The above information, which lists no theological or religious training prior to 1990, appears to indicate that the beneficiary became a pastor at the same time, or perhaps before, he began such training. Documentation submitted with the petition is consistent with the above summary. A transcript and certificate from the Nazarene Theological Institute, both dated late October 1990, show that the beneficiary took ten courses in 1990. A 1997 letter from [redacted] secretary of the church board of the Minerva Hills Church of the Nazarene, states that the beneficiary "was pastor of this church for a period of 6 years (1990-1996)." The petitioning church issued a certificate of ordination to the beneficiary on July 20, 1999.

The beneficiary's ordination as an elder took place less than two years before the petition's April 27, 2001 filing date. In a request for evidence, the director noted that the beneficiary's career as a pastor began nearly a decade before he was ordained as an elder. The director instructed the petitioner to "submit a copy of the beneficiary's ordination certificate as a pastor." The director also noted that a prior petition on the beneficiary's behalf had been denied. The director requested a copy of the previous denial notice.

In response, the petitioner has submitted a partial copy of the denial notice dated September 12, 2000. The partial copy contains only passages from the statute and regulations, and does not reveal the grounds for denial.

On October 30, 1990, the beneficiary received a "minister's license," valid for a term of one year. The record also contains a similar license issued October 27, 1996. The record does not contain copies of licenses issued during the intervening years.

The petitioner has also submitted a letter from [redacted] general secretary of the Church of the Nazarene, International Headquarters, Kansas City, Missouri. M[redacted] states:

> [The beneficiary] is an active ordained minister in good standing of the Church of the Nazarene, having been ordained on July 20, 1999 by the [petitioning church]. [The beneficiary], as a district licensed and ordained minister, has been the pastor of the Familia de Cristo Church of the Nazarene . . . from October 1, 1997 to the present. According to district and regional records, he was serving as a pastor and a district licensed minister in Guatemala between 1990-1997.

In a separate letter, the petitioner's superintendent [redacted] states "[t]he term[s] ***Ordained Minister*** and ***Ordained Elder*** are the same and used interchangeably in the Church of the Nazarene." A partial copy of the *Manual/2001-2005 Church of the Nazarene* corroborates this assertion.

The director denied the petition, noting the absence of evidence that the beneficiary was ordained prior to July 20, 1999. Because the beneficiary was ordained less than two years before the April 27, 2001 filing date, the director determined that the petitioner had not shown that the beneficiary was in the current occupation (ordained minister) for the entire two years prior to the filing date.

The director added "The petitioner has not established that the beneficiary was required to undergo any specific religious training before he was ordained an Elder. . . . The petitioner has failed to establish that the prospective occupation is a religious occupation." The director also noted the petitioner's failure to submit a complete copy of the 2000 denial notice, as instructed.

We withdraw the director's finding that the petitioner has failed to establish that the beneficiary's position is a religious occupation. The *Manual* mentioned above requires years of experience in lesser positions before an individual qualifies for ordination as an elder, and those positions in turn require a "full course of study." The record supports the petitioner's claim that an elder is an ordained minister, and thus the position qualifies as a religious occupation.

On appeal, counsel claims that the partial copy of the 2000 denial notice is "all that the beneficiary had available." We note that the denial notice was sent directly to the petitioner, and not to the beneficiary. Counsel states that the petitioner "could not locate the entire denial." Counsel notes that the full denial notice should be in the director's possession. Review of the record of proceeding from the 2000 denial, which is at present incorporated into the same physical file as the current record of proceeding, shows that the earlier petition was denied because the petitioner failed to submit specific information regarding the beneficiary's past experience and membership in the denomination. Because that information is material to the statutory and regulatory requirements, the director could not approve the petition. There is no indication that the petitioner appealed the director's September 12, 2000 decision.

With regard to the major basis for the denial, counsel asserts that the petitioner has already submitted a letter stating that the beneficiary was "a district licensed and ordained minister . . . from 1997 until the present." Counsel notes that the beneficiary was admitted into the U.S. as an R-1 religious worker in 1997, and the petitioning church and its parent organization have attested that the beneficiary has consistently worked as a minister since his 1997 admission.

Counsel states "[c]learly, the Church of the Nazarene does not require *Ordination as an Elder* for a person to be qualified to lead a Church as the Minister," because the petitioner hired the beneficiary in that capacity before he was ordained. Counsel maintains that the beneficiary met the petitioner's qualifications, and that "[t]hese qualifications have been verified twice: initially on the issuance of the R-1 visa by the Embassy and second, by the Nebraska Service Center on the extension grant of the R-1 visa." In a subsequent brief, counsel argues "[t]he statute <u>does not require ordination</u>. . . . The statute <u>only requires</u> that the individual 'carried on' in the 'vocation of a minister' continuously for at least 2 years immediately preceding [the] filing [of] the application" (emphasis in original).

While counsel is correct in that the statute does not specifically mention ordination, the equally-binding regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there

> must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Counsel quotes the above definition, in full, in the appellate brief. Because the regulatory definition of "minister" specifically excludes "a lay preacher not authorized to perform such duties," the petitioner must demonstrate that the beneficiary, prior to his ordination, was authorized to perform the full range of ministerial duties. That range is not limited to giving sermons and leading prayers. In this sense, the regulatory term "authorized" is effectively synonymous with "ordained" with respect to Christian denominations that practice ordination.

Counsel states that the beneficiary "qualified to work as a minister for the church in 1990 when he was licensed by the church." The license does not specify the duties that the beneficiary was authorized to perform; it only deems him to be "a licensed minister of the Gospel . . . for one year." Because the beneficiary's most recent license expired in October 1997, there is no direct evidence in the record to show that the beneficiary was in fact a "licensed" minister as of April 1999, when the relevant two-year period began. Even so, proof of the beneficiary's licensure during 1999 would not overcome the grounds of ineligibility.

Counsel cites *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), which states "[a]cceptable evidence that an individual meets the qualifications of a minister, when applying for admission to this country, includes a letter or other appropriate statement signed by the Superior or Principal of the religious denomination in the United States." *Id.* at 402. In this instance, counsel states that the petitioner has met this requirement by submitting a letter from the general secretary of the International Headquarters of the Church of the Nazarene, Jack Stone.

[redacted] letter, however, does not indicate that the beneficiary has consistently performed the full range of duties usually performed by authorized members of the clergy of the denomination. Mr[redacted] specifically states, regarding the beneficiary, "[a]s an elder, he is empowered to perform all the ministries belonging to the ordained ministry including but not limited to preaching the Word, administering the sacraments and solemnizing marriages." Mr[redacted] does not state that the beneficiary was authorized to administer sacraments or solemnize marriages before he became an elder. If the beneficiary has always had authority to perform these functions, then Mr. [redacted] would have had no reason to insert the phrase "[a]s an elder." Mr[redacted] refers to the beneficiary's prior work as "a pastor and a district licensed minister," but he never states that a "district licensed minister" is "empowered to perform all the ministries belonging to the ordained ministry." The plain wording of Mr.[redacted] letter states only that the beneficiary has full ministerial authority "as an elder." Because the beneficiary was not an elder of the church for the full two years preceding the filing of the petition, we conclude that this letter does not meet the test in *Matter of Varughese*.

The previously-submitted partial copy of the church's *Manual* mentions "district licensed ministers," "licensed ministers," "ministers" and "pastors," but it also repeatedly states "[w]e

recognize but one order of official ministry-that of elder" (paragraphs 404, 429.1). Paragraph 429 offers the definition of an elder:

> An elder is a minister whose call of God to preach, gifts, and usefulness have been demonstrated and enhanced by proper training and experience, and who has been separated to the service of Christ through His church by the vote of a district assembly and by the solemn act of ordination, and thus has been fully invested to perform all functions of the Christian ministry.

The petitioner did not submit the portions of the *Manual* which define the duties of "district licensed ministers," but the fragment provided by the petitioner definitively shows that there is "but one order of official ministry," and that only the elder "has been fully invested to perform all functions of the Christian ministry." The *Manual* states plainly that authority to perform these functions derives from "the solemn act of ordination." Therefore, while the statute does not specifically require ordination, the petitioning church itself does require it.

Because the beneficiary had not yet been ordained as of April 28, 1999, he was not "authorized to perform all functions of the Christian ministry" for at least two years prior to the filing of the petition. Therefore, the beneficiary did not work in the occupation of a minister (as defined by the regulations) for the entire two years as required by law. Prior to his ordination, the beneficiary's position was essentially that of a lay preacher, specifically excluded from the regulatory definition of a minister. The director was, therefore, correct in finding that the beneficiary had not had two years of experience as a minister.

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.