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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: [REDACTED] Office: CALIFORNIA SERVICE CENTER
(WAC 98 224 51787)

Date:

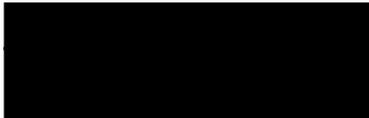
JUN 05 2003

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:



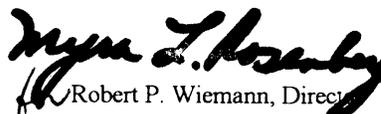
INSTRUCTIONS:

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 Acting Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It 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), in order to employ him for an initial period of three years as a church clerk and catechist at an approximate annual salary of \$25,000.

The acting director denied the petition, finding that the petitioner failed to establish that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification. The acting director further determined that the petitioner failed to provide sufficient evidence that the beneficiary had two years of experience in a religious occupation prior to the filing of the petition. The acting director denied the petition in part, because the petitioner failed to provide sufficient evidence of its ability to pay a wage to the beneficiary. In a notice of intent to deny, the acting director advised the petitioner that while the petitioner indicated that it was offering temporary employment to the beneficiary, the intent of the petition is for permanent employment; therefore the beneficiary was ineligible for special immigrant classification.

On appeal, counsel for the petitioner submits a brief arguing that the beneficiary has the two-year qualifying experience and that the acting director erred by requiring evidence that the prior experience be remunerated and not voluntary. The petitioner indicated that the beneficiary's outlook for continued employment was excellent.

The record of proceeding contains the Form I-360 petition and supporting documentation, a request for additional evidence, the petitioner's response to the request, a notice of intent to deny, the acting director's decision, and an appeal with 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 petitioner in this matter is a Catholic church. The beneficiary is a native and citizen of Korea. The petitioner failed to state the size of its congregation and the number of its employees. It submitted evidence that it has the appropriate tax-exempt status. The beneficiary entered the United States as a nonimmigrant visitor for pleasure (B-2) on January 16, 1998 and subsequently changed his status to that of a religious worker (R-1) on December 11, 1998.

To establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue to be addressed in this proceeding is whether the proposed position constitutes a qualifying

religious occupation for the purpose of special immigrant classification.

A petitioner must establish that the proposed position qualifies as a 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.

The petitioner described the beneficiary's job duties as follows:

Mr. [REDACTED] will be responsible for coordinating the church bulletin for Sunday worship services and engaging in other various duties throughout the year. The specified position will involve serving as 1) the church bulletin editor-in-chief for all Sunday worship; 2) the diverse culture program coordinator whose duties include providing direction for church members and helping them assimilate into the American culture; 3) the Catechist whose religious duties include building up the congregation through inviting people to the church and witnessing to individuals; 4) the church clerk who heads the general affairs of the church.

In a request for additional evidence, the acting director asked the petitioner to submit:

a detailed description of the work to be done
... specific job duties, level of
responsibility, number of hours per week
performing the work duties and the minimum

education, training, and experience necessary to do the job. Further explain how the duties of the position relate to a traditional religious function.

There is no evidence on the record that the petitioner responded to this specific request for further evidence regarding the proffered position. Failure to respond to a request for additional evidence may be the basis for denial of a petition. 8 C.F.R. § 103.2(b)(13).

The evidence on the record is insufficient to establish that the proffered position qualifies as that of a religious occupation. The job description is vague and the record is devoid of evidence relating the church bulletin editor's duties with a "traditional religious function."

The next issue for consideration in this proceeding is whether the beneficiary had two years of experience in the proffered position prior to 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 17, 1998. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the occupation of catechist and church clerk since at least August 17, 1996.

The petitioner submitted a letter from its pastor stating that the beneficiary carried out religious duties as a church clerk for the Huam-Dong Catholic Church in Korea since November 1996. The petitioner provided the Bureau with a letter dated June 29, 1998 from the Huam-Dong Church pastor verifying that the beneficiary had been employed as a church clerk from November 1, 1996 "to present." The Huam-Dong Church pastor also indicated that the beneficiary had been previously employed at the Mok Dong Catholic Church as a church clerk from January 1995 until October 1996. Even if the Bureau accepted the letter as sufficient evidence of employment since January 1995, the petitioner

failed to establish that the beneficiary had been continuously employed in the occupation until the date of filing (August 17, 1998). The evidence on the record shows that the beneficiary entered the United States on January 16, 1998 as a nonimmigrant visitor for pleasure. The Form I-360 petition indicates that the beneficiary had not worked without authorization between the date of entry and the filing date of August 17, 1998. The evidence is insufficient to establish that the beneficiary continuously carried on the occupation of catechist and church clerk for the two-year period prior to the filing of the petition. Further, the acting director concluded that a claim of voluntary service to one's church was insufficient to satisfy the requirement of having been continuously engaged in a religious occupation. The AAO concurs.

A petitioner also must demonstrate the employer's ability to pay the proffered wage.

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. Therefore, the petitioner has not satisfied the documentary requirement of this provision.

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.