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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]

JUN 27 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:

[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, California Service Center, and 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), 8 U.S.C. § 1153(b)(4), in order to employ him as a Pastor of Spanish Ministries.

The director denied the petition, finding that the beneficiary's volunteer work with the petitioner was insufficient to satisfy the requirement that he had been continuously carrying on the religious occupation of Pastor for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submits a brief and additional evidence.

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 church affiliated with the Assemblies of God denomination. The beneficiary is a native and citizen of Peru. The petitioner indicated that it has eight pastoral staff, excluding the beneficiary. It submitted evidence that it has the appropriate tax exempt recognition. The evidence on the record indicates that the beneficiary last entered the United States as a nonimmigrant visitor for business (B-1) on July 12, 1995 and that his status expired on August 11, 1995.

At issue in this proceeding is whether the beneficiary had been working continuously for the two years preceding the filing of the petition in the same capacity as the proffered position, pastor.

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 July 16, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least July 16, 1999.

The petitioner included a statement from the beneficiary as an attachment to the Form I-360 petition that reads: "I have also worked in construction and gardening when I have had free time, however, it is my preference and the Church's desire that I dedicate all my time to the Church from now on."

The petitioner submitted a letter from the its Senior Pastor stating that:

> [The beneficiary] joined [the petitioner's] ministry in September 2000 after leaving Comunidad Cristiana, where he served from September 1998 to September 2000. Since joining our ministry, [the beneficiary] has dedicated 20-35 hours of non-compensated work to our church as Pastor of Spanish Ministries. Because he is not presently authorized by law to be compensated for work performed, we have not paid him to work for our church. He presently gives of his time in serving the body of Christ.
>
> His necessary employment outside of the church prior to his being authorized for employment by this church is not an indication that he will have to continue supplemental income once the petition has been approved.

In a request for additional evidence, the director requested that the petitioner submit additional evidence including a detailed account of the beneficiary's work history and evidence of monetary

payment such as W-2's. In reply, the petitioner provided the Bureau with copies of the beneficiary's income tax returns for the years 1999 and 2000, indicating that he had been self-employed.

The director concluded that a claim of part-time voluntary service to one's church was insufficient to satisfy the requirement of having been continuously engaged in a religious occupation. The director noted that the petitioner had failed to fully comply with his request for additional evidence.

On appeal, counsel for the petitioner asserts that the director erred in defining the required two-year experience provision to require full-time work and in stating that the prior experience must have been full-time salaried employment in order to qualify. In support of his assertions, counsel for the petitioner cites unpublished decisions. Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in the cited cases. Moreover, unpublished decisions are not binding in the administration of the Act. *See* 8 C.F.R. § 103.3(c). Counsel's arguments are not persuasive.

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. 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 fulltime student who was devoting only nine hours a week to religious duties. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). This reasoning can be applied in the instant case.

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.