PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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: WAC 01 161 53913 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 Acting 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, seeking 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 "Christian Book Editor" at a monthly salary of $1,200 plus a housing allowance.

The acting director denied the petition, finding that the petitioner failed to establish that the beneficiary has the requisite two years of continuous full-time salaried experience in a religious occupation, and that it has the ability to pay the proffered wage.

On appeal, counsel for the petitioner submits a statement in support of the appeal, asserting that the beneficiary has been employed for the requisite two years, and that the petitioner has the ability to pay the proffered wage.

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 native and citizen of Egypt. According to the evidence on the record, the beneficiary first entered the United States as a B-2 nonimmigrant visitor for pleasure on January 19, 1997 and again on June 2, 1998 as an R-1 nonimmigrant religious worker.

The first issue to be addressed in this proceeding is whether the petitioner established that 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 April 2, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 2, 1999.[1]

The petitioner submitted a letter from its Pastor stating that:

> [The beneficiary] is currently in R-1 status in the United States as a religious worker for [the petitioner] from 3/2/2000 to the present.[2] Previously, he was employed by the Arabic Communication Center working as a Christian book editor, translator, and writer. He also develops material for Christian radio broadcast, etc. The Arabic Communication Center is also affiliated with the Presbyterian Church, (U.S.A.). He was in R-1 status with the Arabic Communication Center since June of 1998 as a religious book and published materials editor and director.

The petitioner provided the Bureau with a letter written by the President of the Arabic Communication Center stating that the beneficiary began working for it as of May 1998.

In response to the acting director's request for additional evidence, the petitioner wrote the Bureau that the beneficiary worked on a volunteer basis for the petitioner from September 1, 1999 until April 2000. The petitioner further indicated that it helped cover the beneficiary's living expenses between July 1, 1999

---

[1] The director erred in writing that the petitioner must establish that the beneficiary was continuously carrying on the religious vocation or occupation since March 14, 1998.

[2] The beneficiary's R-1 status expired on September 1, 2002.

and April 1, 2000. The petitioner provided the Bureau with copies of Forms 1099 issued to the beneficiary as follows:

Payer	Year	Amount
Petitioner	2001	$13,200
Petitioner	2000	7,800
Arabic Communications Center (ACC)	1999	3,000
ACC	1998	10,200

The acting director determined that the evidence was insufficient to establish that the beneficiary has the required two years of experience in a religious occupation. In review, the AAO concurs. The petitioner admits that the beneficiary was not paid a salary throughout the two-year period in question.

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 regulations are silent on the question of volunteer work satisfying the requirement. The regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines a lay religious occupation, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. *See* 8 C.F.R. § 204.5(m)(4). 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 continuous salaried employment in order to qualify as well.

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

The second issue raised by the acting director is whether the petitioner established that it had the 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 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.

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.