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 01 217 56548 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. 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 youth director at a monthly salary of $1,200.

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

On appeal, counsel for the petitioner submits a brief arguing that the acting director erred in interpreting the law to require that the beneficiary's two-year experience be full-time and salaried. Counsel for the petitioner also asserts that the beneficiary worked full-time for the beneficiary.

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 Korean Community Christian Church. The beneficiary is a citizen of Korea. The petitioner states that it has approximately 200 families in its congregation. The petitioner failed to state the number of its employees. It submitted evidence that it has the appropriate tax exempt recognition. The beneficiary entered the United States as a nonimmigrant visitor for business (B-1) on November 17, 1997.

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

At issue 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 April 25, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 25, 1999.

The petitioner submitted a letter from its Senior Pastor stating that the beneficiary had been a member of the Sung Wha Church in Korean and served 15 years there before coming to the United States. The petitioner further states that the beneficiary came to the United States "intending to go into missionary work. While he was at Utah he served the youth group there with the Utah Missionary Church."

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.

In a response to a request for additional evidence, the petitioner submitted a letter from the beneficiary. The beneficiary wrote:

> I came to Oakland, California in July of 1999 and started a trading business, the small income from which supported me. Also since then I have been a Worship Leader, Prayer Meeting Leader, and Youth Group Counselor at the Korean Community Christian Church. The services I rendered to the church would take up about 20 hours a week. The groups I served at church gave me some

> remuneration through voluntary offers. The average remunerations I received was about $450 a month.

The acting director concluded that a claim to part-time voluntary services was insufficient to satisfy the requirement of being continuously engaged in the religious occupation for the preceding two years. The AAO concurs.

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 is applicable to 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.