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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]

File: WAC-01-041-53031 Office: California Service Center Date: MAY 14 2003

IN RE: Petitioner: [redacted]
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:

[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.

Mary L. Rosenberg
for 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 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), to perform services as a pastor.

The acting director determined that the beneficiary's part-time volunteer work with the petitioner was insufficient to satisfy the requirement that he had continuously engaged in a qualifying religious occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel asserts that since his arrival in the United States, the beneficiary has been paid a full-time salary from the [redacted] in Korea, and has served full-time as a missionary pastor belonging to both the foreign church and the petitioning church, [redacted]

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).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

> 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.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

> *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.

At issue in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petition was filed on November 20, 2000. Therefore, the petitioner must establish that the beneficiary was working continuously as a pastor from November 20, 1998 until November 20, 2000. The record indicates that the petitioner last entered the United States as a B-2 visitor on April 29, 2000. The record reflects that he remained beyond his authorized stay and has resided in the United States since such time in an unlawful status. The petition, Form I-360, indicates that the beneficiary has never been employed in the United States without permission.

In response to a request for additional evidence, counsel for the petitioner provided documentation dated June 18, 2001 describing the beneficiary's job duties and hours worked. Counsel asserted that from January 1995 to December 2000 the beneficiary was employed and compensated by an affiliated church in Korea [redacted] as a pastor. Counsel provided a "certificate of remuneration" to support the claim. Counsel stated that from November 20, 1998 through April 2000 the beneficiary worked 20 "public" hours per week at the [redacted] as follows:

Activity	Hours per week
Daily 5:00-6:00 a.m. lead prayer group	7
Lead Wednesday Service	1
Lead regional group leader meeting every Friday at 3-6 p.m.	1
Attend Monday to Saturday meetings	10
Attend general assembly's meeting, every September	1

Counsel further stated that the beneficiary also worked 20

"private" hours per week as a pastor at the church as follows:

> Worked for various unrecorded amounts of time at Weddings, social engagements, visiting hospitals, helping in various charitable organizations, such as orphanages and convalescent homes, attended seminars on religious works, and counseled all those who needed to counseling at various times. Because of the nature of this work, [the beneficiary] did not record these work hours in the same way he recorded his Public Work Hours.

Counsel specifically delineates the beneficiary's duties from November 20, 1998 to April 2000 at the [redacted] as:

> Lead daily prayer group, lead weekly service, lead and attend meetings, visited church members for special occasions and ceremonies, visited church members for counseling, helped in various charitable organizations, such as orphanages, convalescent homes, and schools, accepted persons for counseling at church.

Counsel asserted that from May 2000 through November 2000 the beneficiary worked as a pastor for 11 hours per week at the [redacted] and listed the beneficiary's duties as follows:

> Lead [redacted] Revival (May 8, 2000 to May 10, 2000) for one half hour per week.
> Lead [redacted] (May 8, 2000 to May 10, 2000) for one half hour per week.
> Lead [redacted] Revival (May 15, 2000 to May 17, 2000) for one half hour per week.
> Attend Victorville Methodist Church's Spiritual Training as a lecturer (May 25, 2000 to May 27, 2000) for one half hour per week.
> Attend Rema Bible Institute's Seminar (May 29, 2000 to May 31, 2000) for one half hour per week.
> Organize bible study group for Korean students at L.A. Valley College (by June 5, 2000: established 12 members) for three hours per week.
> Organize mission group for Korean students at Pierce College (June 13, 2000: established 9 members) for three hours per week.
> Organize Praise Team for Korean students at CSUN (California State University of Northridge) (June 26, 2000: established 8 members) for three hours per week.

Counsel specifically delineates the beneficiary's duties from May 2000 through November 2000 at the [redacted] as:

> Lead church revivals, attend spiritual training as a lecturer, attend seminars, organize bible study groups for Korean students at colleges, organize Praise Teams for Korean students at CSUN.

The beneficiary stated in pertinent part:

> Korean government grants tax exemption to religious workers in Korea. Therefore, I do not have any documents [sic] prove that I've paid taxes. There were many times, where the church could not pay the gratitude due to weak budget. This is what the brand new churches in Korea have to go through. When there's a problem as such, I, myself have been supported by private donor, or from religious groups.

In the record is the beneficiary's school transcript along with a facsimile of a diploma from the Pyung Yang Theological Seminary of the Korean Presbyterian Church that certifies the beneficiary graduated on February 4, 1993 with a bachelor's degree. The record also contains several photographs allegedly of the beneficiary's appointment as a pastor.

On review of the record, it is concluded that the petitioner has failed to overcome the director's concern. First, the petitioner has not provided any evidence of its claim of having employed the beneficiary as a full-time pastor beyond counsel's and the beneficiary's own testimonies and their self prepared description of duties. To establish that an alien is qualified in a religious position and has been carrying on such a position, acceptable evidence includes a letter from a Superior of Principal of the denomination in the United States. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Second, in addressing the beneficiary's education documentation, the diploma, which is written in the English and Korean language, failed to indicate a major or field of study. As such, the issuance of a document entitled "diploma" does not establish that the beneficiary is entitled to perform the duties of a minister or pastor for the purpose of special immigrant classification. *Matter of Rhee*, 16 I&N Dec.607, 610 (BIA 1978).

Third, the Bureau has no means to verify the "certificate of remuneration" purportedly submitted by an official of the [redacted] in Korea. The petitioner did not provide corroborative evidence such as the beneficiary's foreign tax documents, verification from an authorized official of the United States denomination, or other comparable indicia. The Bureau has no means to verify the contents of the letter purportedly submitted by the foreign church. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, counsel for the petitioning church originally indicated that the beneficiary, since his entry into the United States, worked 11 hours a week for the [redacted] On appeal, however, counsel revises his statement to indicate the beneficiary has worked full-time at the church.

Discrepancies encountered in the evidence presented are called into question in the petitioner's ability to document the requirements under the statute and regulations. These discrepancies in the

petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Based on the record as presently constituted, it cannot be concluded that the petitioner has established that the beneficiary was continuously engaged in a religious occupation for at least two years preceding the filing of the petition.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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.