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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
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Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted [redacted]y

File: [redacted] Office: VERMONT SERVICE CENTER Date: SEP - 2 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]

PUBLIC COPY

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Hispanic Pentecostal 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 her as director of youth religious education.

The director denied the petition, finding that the petitioner failed to establish that it was a qualifying tax exempt organization, that the offered position constituted a qualifying religious occupation for the purpose of special immigrant classification, that the beneficiary had been continuously carrying on a full-time salaried religious occupation for the two-year period immediately preceding the filing date of the petition, and that the church had demonstrated the ability to pay a qualifying wage.

On appeal, counsel submits a brief and additional documentation.

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 did not provide any information as to the size of its congregation or the number of individuals serving the church as salaried employees. The petitioner indicated on the Form I-360 petition that the beneficiary, a native and citizen of the Dominican Republic, arrived in the United States on August 22, 2000,and was not in any valid nonimmigrant status as of the filing date of the petition.

The first issue to be determined in this proceeding is whether the petitioner has established that it is a qualifying religious organization as defined in this type of visa petition proceeding.

Pursuant to 8 C.F.R. § 204.5(m)(3), each petition for a special immigrant religious worker must be accompanied by:

> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
>
> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or
>
> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

The director determined that the Internal Revenue Service (IRS) Exemption Letter submitted by the petitioning church with the initial Form I-360 petition could not be accepted as evidence that it is exempt from federal taxation under section 503(c)(3) of the Internal Revenue Code because the address listed on the exemption letter differed from the petitioner's address on the Form I-360 petition.

On appeal, counsel furnished another IRS exemption letter addressed to the petitioner at the address that appears on the I-360 petition, along with copies of the petitioner's Form 990 Return of Organization Exempt From Income Tax for the years 2000 and 2001. The petitioner's address on both Forms 990 is the same address as the address on the initial I-360 petition. It is concluded the petitioner has shown that it has the appropriate tax exempt recognition as a religious organization. Therefore, this issue as a ground of ineligibility has been overcome.

The second issue to be reviewed in this proceeding is whether the petitioner has established that it has the ability to pay the proffered wage.

On appeal, counsel asserts that the petitioner has sufficient revenue to pay the beneficiary's salary.

Pursuant to 8 C.F.R. § 204.5(g)(2):

> 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.

Although the petitioner indicates that the beneficiary will be a full-time salaried employee, the petitioner has failed to provide any information as to the amount of the beneficiary's proposed salary, either initially, in response to a Bureau request for additional evidence, or on appeal. The petitioner has previously submitted its own in-house financial reports for the year 2000, bank statements for the months of September, November, and December 2000, and a Form 941 Employer's Quarterly Federal Tax Return for the quarter ending June 30, 2000. These documents are not sufficient to show that the petitioner has the ability to pay the beneficiary's salary because they do not provide sufficient information regarding the petitioner's total income and expenses for the year 2000, much less for the period from the filing date of the petition to the approval date of the petition. According to the petitioner's unaudited annual reports of income and expenses for the year 2000, the petitioning church's reported income in the amount of $179,615.98 and expenses in the amount of $162,925.00, with net income in the amount of $16,690.98, is an insufficient amount to demonstrate that the beneficiary would not need to depend on supplemental employment or solicitation of funds for support.

On appeal, counsel submits copies of the petitioner's Form 990, Return of Organization Exempt from Income Tax, for the years 2000 and 2001. The petitioner's Form 990 for the year 2000 reports income in the amount of $179,816 and expenses in the amount of $103,978, with net income of $75,838. This amount contradicts the petitioner's own internal balance sheet for the year 2000, which reported a net income of $16,690.98. The petitioner has not provided any explanation for this discrepancy. The petitioner's Form 990 for the year 2001 reports income in the amount of $135,683 and expenses in the amount of $118,413, with net income of $17,270. In view of the foregoing, it is concluded the petitioner has not submitted sufficient evidence to show that it has the ability to pay the beneficiary's salary from the filing date of the petition to the date the beneficiary attains lawful permanent resident status. For this reason, the petition may not be approved.

The third issue to be addressed in this proceeding is whether the petitioner has shown that the offered position qualifies as a religious occupation for the purpose of special religious worker classification.

On appeal, counsel contends that the offered position qualifies as a religious occupation based on the petitioner's description of the duties.

The term "religious occupation" is defined at 8 C.F.R. § 204.5(m)(2) as follows:

> *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 regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious or theological background.

The Bureau interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning religious organization.

In response to a Bureau request for additional evidence, the petitioner described the duties of the offered position and the beneficiary's weekly schedule as follows:

Mon 7:30pm-10:30pm	:	Teachers' [sic] bible classes.
Tue " "	:	Youth (teen) bible classes
Wed " "	:	Women prayer service
Thu " "	:	Evangelism (home visitations)
Fri " "	:	General religious service
Sat 09 am-12noon	:	Children bible classes
Sat 01pm-04pm	:	Adult bible classes
Sun 10am-02pm	:	Deliverance Service
Mon-Fri 03pm-5pm	:	Counseling sessions (at church)

After a review of the record, it is concluded that the petitioner has not established that the position of director of youth

religious education constitutes a qualifying religious occupation.

The petitioner has not submitted any evidence to show that the position is defined and recognized by the governing body of the denomination or that the position is traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning church.

The fourth issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary had completed the requisite two years of continuous experience in the proffered position.

Pursuant to 8 C.F.R. § 204.5(m)(1):

> 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 May 29, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing in a religious occupation since at least May 29, 1999.

The petitioner submitted a letter from a member of the Board of Directors of the Church of God of Prophecy in the Dominican Republic which stated that the beneficiary worked as a missionary for the church in Guatemala from 1990 to 1995 and as a coordinator of youth ministry in the Eastern region of the Dominican Republic. The letter also stated that the beneficiary was a member of the Administrative Committee, a personal secretary to the National Director of the Youth Ministry, and a member of the National Prayer Board from 1996-1998. The petitioning church has not, however, provided any evidence to show that the beneficiary was continuously employed as a full-time salaried religious worker, either abroad or in the United States, during the two-year period immediately preceding the filing date of the petition. 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).

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall,* 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee,* 16 I&N Dec. 607 (BIA 1978).

Beyond the director's decision, it is noted that the petitioner

has not submitted a job offer from an authorized official stating how the alien will be paid or remunerated and indicating that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. As the petition will be dismissed on the grounds discussed above, this issue need not be discussed further.

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.