U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: SEP - 2 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant 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: SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The director later reopened the petition on the petitioner's motion and approved the petition. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the revocation of the petition will stand.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a lay bible worker. The director found that the beneficiary's unpaid volunteer work does not constitute qualifying experience, the position sought is not a qualifying religious occupation, and the petitioner had not established its ability to pay the proffered wage. The AAO dismissed the petitioner's appeal, concurring with the director's findings and adding that the petitioner has failed to establish its status as a tax-exempt religious organization.

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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "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)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

On motion, the petitioner contests the finding that the beneficiary's "voluntary services are not considered a religious occupation." The AAO, in its prior appellate decision, explained at length why unpaid volunteer work is not considered to be qualifying experience in a religious occupation. The petitioner expresses disagreement with this finding but offers no argument or evidence to overcome the finding.

The petitioner submits a new job description, stating that the duties of a "Religious Instructor/Bible Worker" consist of "Teaching and Spiritual Leadership," "Nurture and Spiritual Counseling," "Administrative and Training" and "Public Relations." The petitioner asserts that over half of the beneficiary's 36 hours per week are devoted to spiritual counseling.

The petitioner submits a copy of a certificate, dated February 13, 1999, indicating that the beneficiary "has completed all the requirements for the Personal Ministries Program Level 1." If the beneficiary completed Level 1 training in 1999, then she evidently did not have such training in January 1998 when the petition was filed. The petitioner does not explain the link between "Personal Ministries" training and employment as a bible instructor. The petitioner had previously submitted another copy of this certificate.

The petitioner cites page 138 of the *Seventh-Day Adventist Church Manual*, which includes "Bible Instructors" in a chapter called "Ministers and Workers." The petitioner had previously submitted a copy of this same page. The *Manual* states "[a] very important line of service is that of the Bible instructor. This is recognized by conferences/missions/fields in employing suitable

persons to engage in this line of work." The petitioner, however, has not demonstrated that the beneficiary's duties are primarily those of a "Bible instructor."

The petitioner had indicated, in 1998, that the beneficiary would serve as a "Bible Worker," "Personal Ministries Secretary," "Sabbath School Division Assistant Leader," "Sabbath School Teacher," "Assistant Head Deaconess" and "Prison Ministry Secretary." On motion, the petitioner refers to the beneficiary as a "Religious Instructor/Bible Worker" with duties as described above. Thus, both the beneficiary's job title and her duties have changed over the course of this proceeding.

To show that the beneficiary "was continually employed by the church for the two-year period," the petitioner submits copies of the beneficiary's income tax documents from 1999 and 2000. The petitioner states that these documents include "both years W2's," i.e. Form W-2 Wage and Tax Statements. The record, however, does not contain such forms. The record does contain a Form 1099-MISC Miscellaneous Income statement indicating that the petitioner paid the beneficiary $14,040 in 2000. Form 1099-MISC is issued to contractors rather than to employees, and therefore this form does not demonstrate that any formal employment relationship existed between the beneficiary and the petitioner in 2000. For 1999, the petitioner has not even produced a Form 1099-MISC. Instead, the petitioner submits a letter from treasurer Cynthia Swift, indicating that the beneficiary "received a stipend in the amount of $14,400.00 for the fiscal year ending December 31, 1999 . . . for services provided in the ministries of the Church."

The tax documents from 1999 and 2000 fail to overcome the AAO's finding regarding past employment because, pursuant to 8 C.F.R. § 204.5(m)(1), the petitioner must show the beneficiary's continuous employment in the position throughout the two years immediately prior to the filing of the petition. In this instance, the petition was filed on January 12, 1998, and therefore the qualifying period spanned from January 1996 to January 1998. If the petitioner cannot establish employment during that period, then the petitioner cannot overcome that deficiency by establishing employment during a different two-year period such as 1999 and 2000. Aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

To establish its ability to pay the proffered wage, the petitioner submits copies of spreadsheet-style financial reports from 1998, 1999, and 2000. The petitioner has not shown that these reports qualify as annual reports, or that the information therein was obtained through audits. Thus, the petitioner still has not provided evidence of its ability to pay in the form of annual reports, federal tax returns, or audited financial statements as required by 8 C.F.R. § 204.5(g)(2).

We note that the reports purport to list all of the church's annual expenditures, but we are unable to locate the petitioner's claimed payments to the beneficiary in the 1999 or 2000 reports. These payments are said to have been in excess of $14,000 per year, but the only listed expenditures that exceed $14,000 in either year are labeled "Mortgage" and "Adm Staff." This discrepancy between the petitioner's purported records, and its claim to have paid the beneficiary in 1999 and 2000, necessarily raises questions of credibility. Doubt cast on any aspect of the petitioner's proof

may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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).

With regard to the AAO's finding that the petitioner has not sufficiently established its coverage under the group exemption granted to the Seventh-Day Adventist Church, the petitioner submits a letter from the Executive Secretary of the Northeastern Conference of Seventh-Day Adventists, who affirms that the petitioner is a member of that conference. This documentation suffices to establish the necessary link between the parent church and the petitioning entity.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed.

ORDER: The AAO's decision of November 29, 2001 is affirmed. The revocation of the approval of the petition stands.