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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street N.W.
Washington, D.C. 20536

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 12 2003

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 Citizenship and Immigration Services (CIS) 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 Director, Texas 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 her as a Bible teacher.

The director denied the petition, finding that the beneficiary's volunteer work with the petitioner was insufficient to satisfy the requirement that she 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 argues that volunteer work can satisfy the two-year experience requirement.

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 is a church affiliated with the Presbyterian denomination. The beneficiary is a 48-year old native and citizen of Korea. The petitioner submitted evidence that it has the appropriate tax exempt recognition. According to the evidence on the record, the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on December 24, 1995.

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 February 20, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least February 20, 1999.

The petitioner submitted a letter from its pastor stating that the beneficiary "has been working as a full-time Bible Teacher for [the petitioning] church since January 1999. Our church has been providing food and gas [to the beneficiary] as compensation for her volunteer work."

The director concluded that because the Act requires two years of continuous experience in the same position for which special immigrant classification is sought and the proposed position is a salaried one, the CIS requires that the prior experience to be salaried employment as well. The AAO concurs.

Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating evidence such as certified tax documents, the CIS is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

Counsel for the petitioner cites an unpublished AAO decision and meeting minutes of the American Immigration Lawyers Association in support of his assertion that volunteer experience may qualify. Unpublished decisions are not binding in the administration of the Act. *See* 8 C.F.R. § 103.3(c).

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.