

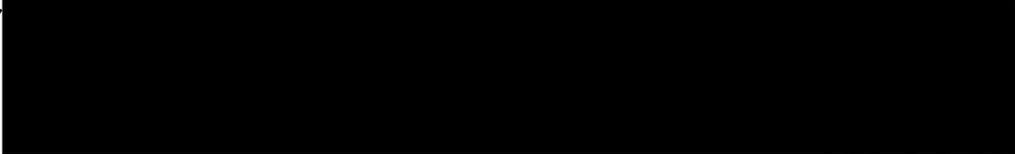
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

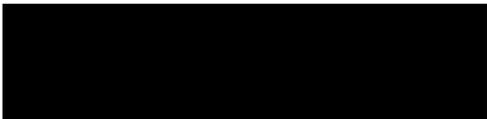


File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 15 2003

IN RE: Petitioner: [redacted]
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:



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 approval of the immigrant visa petition was revoked by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a religious organization, 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 him as a liturgical worker at a weekly salary of \$300.

The director revoked the petition, finding that the petitioner failed to establish that the beneficiary is qualified for the proffered position. The director further found that the petitioner had failed to establish that the beneficiary has the requisite two years of continuous experience in a religious occupation. The director found that the petitioner failed to establish that it had the ability to pay the proffered wage.

On appeal, counsel for the petitioner submits a brief.

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 beneficiary is a 40-year old native and citizen of the Philippines. On the Form I-360 petition, the petitioner indicated that the beneficiary entered the United States on December 14, 1987 in an undetermined status.

The first issue to be addressed in this proceeding is whether the petitioner established that the beneficiary is qualified for the position.

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:

* * *

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation.

The petitioner's president submitted an undated letter with the initial petition, stating that the beneficiary had been attending Living Torah and School of the Prophets from 1995 to the present. The same individual submitted a letter to CIS dated August 21, 2000, stating that the beneficiary had been attending Torah class from 1996 to the present.

The discrepancy as to when the beneficiary commenced study calls into question the veracity of the petitioner's assertions. 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, 591-92 (BIA 1988).

The petitioner's president wrote CIS stating that the beneficiary "has enough experiences and qualifications as a religious worker."

In review, given the vagueness of the petitioner's assertion, the evidence is insufficient to establish that the beneficiary is qualified to be a liturgical worker.

The next issue to be addressed 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 July 7, 1997. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least July 7, 1995.

The petitioner submitted a letter from its president, stating that:

[The beneficiary has] been working in our ministry as liturgical worker/translator since June 1995 as part-time employee, working from 6:00 p.m. - 11:00 p.m. Monday through Friday.

The evidence on the record contains copies of the beneficiary's W-2's from 1997 showing that he earned wages at Healthcare Partners and Brotman Medical Center. The petitioner submitted a letter to CIS stating that it was paying the beneficiary a "token amount" for his services. The petitioner produced no corroborative evidence that it had paid the beneficiary wages. The petitioner concedes that the beneficiary was working for it on a part-time basis.

The director concluded that unpaid part-time employment would not satisfy the two-years of qualifying experience requirement. The AAO concurs.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, CIS interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify.

The legislative history of the religious worker provision of the Immigration Act of 1990¹ states that a substantial amount of case had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. See H.R. Rep. No. 101-723, at 75 (1990).

In *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com. 1963), the Commissioner determined that if the beneficiary were to receive no salary for church work, he would be required to earn a living by

¹ Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990).

obtaining other employment. In analogous reasoning, the CIS determines that unpaid experience does not qualify as the beneficiary must have sought outside employment to support himself. The evidence is insufficient to establish that the beneficiary was continuously carrying on a religious occupation in the two-year period immediately preceding the filing of the petition.

The next issue to be addressed in this proceeding is whether the petitioner provided sufficient evidence of its ability to pay the beneficiary.

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

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.

The petitioner failed to address this issue on appeal. The petitioner initially submitted copies of tax returns for 1994 and 1995. The 1994 tax return shows a deficit for the year. The 1995 tax return shows a surplus of \$1,323, an amount insufficient to cover the beneficiary's proposed wages (\$300 a week or \$15,600 per year).

In review, the petitioner has failed to overcome the director's objection to approving the petition.

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.