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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



File # [redacted]

Office: TEXAS SERVICE CENTER

Date: SEP 15 2003

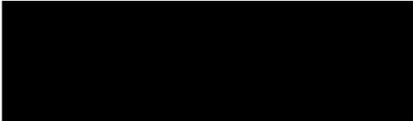
IN RE: Petitioner:
Beneficiary:



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)

PUBLIC COPY

ON BEHALF OF PETITIONER:



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 Acting 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 minister 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 "worship minister" at a monthly salary of \$1,450, which includes a housing allowance.

The acting director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously carrying on a religious occupation or vocation for at least the two years preceding the filing of the petition.

On appeal, the petitioner asserts that the acting director erred in denying the petition and that since the beneficiary is an ordained minister, there is no requirement that she had been employed in a salaried capacity.

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 established in 1939. The beneficiary is a 38-year old native and citizen of Brazil who last entered the United States on June 11, 1998, as a B-2 nonimmigrant visitor for pleasure. Records reflect that the beneficiary changed her status to that of a F-1 nonimmigrant student at Richland College on September 25, 1999, with authorized stay until December 30, 2002.

At issue in this proceeding is whether the petitioner established that the beneficiary has the two years of qualifying experience in a religious occupation or vocation.

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.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N Dec. 391 (Comm. 1986).

The petition was filed on January 19, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least January 19, 1999.

In a letter dated December 11, 2000, an assistant pastor for the petitioning church wrote that the beneficiary and her husband had been serving in the worship ministry as volunteers for the past two and a half years. In a letter dated April 22, 2002, the pastor of the petitioning church wrote that:

[The beneficiary] has been volunteering her services as Worship Minister in our church since September 1998 in which she spends many hours a week. She is an ordained Worship Minister and participates in many activities to accomplish her ministry.

Her activities consist of leading worship during our morning and evening services on Sunday and leading worship during various prayer meetings. In addition, she leads the rehearsal of the church choir, the rehearsal of the church's [sic] musical group and many different practices and meetings through the week. [The beneficiary] also volunteers in the training of new

musicians.

The acting director found that the evidence was insufficient to establish that the beneficiary had been continuously carrying on a religious occupation in the two-year period immediately preceding the filing of the petition. Furthermore, based on CIS records, it would appear that the beneficiary was a full-time student during most of the qualifying period.

Counsel for the petitioner argues that there is no requirement that an ordained minister demonstrate that she had been salaried. Counsel for the petitioner cited an unpublished decision for the proposition that an ordained minister can satisfy the two-year requirement whether he received direct remuneration or indirect support and sustenance. Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in the unpublished decision. Moreover, unpublished decisions are not binding in the administration of the Act. See 8 C.F.R. § 103.3(c).

As previously noted, the statute and the regulations require the beneficiary have been continuously engaged in the religious occupation for the qualifying two-year period. The term "continuously" is not new to the context of religious workers. In 1980, the Board of Immigration Appeals determined that a minister of religious was not "continuously" carrying on the vocation of minister when he was a fulltime student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In review, the petitioner did not provide a detailed description of the beneficiary's means of financial support in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating evidence such as certified tax documents, the Bureau is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period. Counsel's argument that there is no requirement that an ordained minister be salaried is without merit. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, and the proposed position at issue is salaried, the prior experience must have been salaried employment to qualify.

Furthermore, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period or that she would be solely engaged as a minister with the petitioning church.

Beyond the acting director's decision, the evidence of record is insufficient to establish that the beneficiary is a qualified minister for the purpose of special immigrant classification.

Simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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.