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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

Office: NEBRASKA 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)

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 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, Nebraska Service Center, and was subsequently appealed. The Administrative Appeals Office (AAO) summarily dismissed the appeal for failure to timely submit a brief. On motion to reopen, the petitioner submits evidence that it filed the brief in a timely fashion. The motion will be granted; the denial of the petition will be affirmed.

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 in the ministry of the petitioner's organization.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition. The director further found that the petitioner failed to establish that the beneficiary is qualified as an ordained minister, or that it had proffered a valid job offer.

On motion, 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 petitioner in this matter is a religious corporation incorporated in 1982. The beneficiary is a 49-year old native and citizen of Nigeria who last entered the United States as a B-1 nonimmigrant visitor for business on January 9, 1999.

The first issue to be addressed in this proceeding is whether the petitioner established that the beneficiary is qualified as a minister as defined in the pertinent regulations.

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.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

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

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The director determined that the petitioner failed to establish that the beneficiary is an ordained minister who is authorized to conduct religious worship and perform other duties usually performed by authorize members of the petitioner's clergy.

On motion, counsel for the petitioner asserts that the petitioner

does not propose to employ the beneficiary as a minister, but rather, in the vocation performing "essential functions" of the denomination.

In review, the evidence on the record shows that the petitioner expressed an intention to employ the beneficiary as a minister. In response to a request for additional evidence, the petitioner stated that the beneficiary "has been actively and faithfully involved in carrying on the vocation of a minister."

The petitioner submitted a certificate of appreciation awarded to the beneficiary for his "labor of love to help Breakthrough preach the Gospel of Jesus Christ." The petitioner also submitted a certificate acknowledging that the beneficiary has completed the course of study and all requirements for "street witnessing and soul winning" at the Chicagoland Gospel Radio Network in June 1999. The petitioner submitted the beneficiary's transcript from the Moody Bible Institute in Chicago, showing that the beneficiary had earned three credits as of January 24, 2001.

The evidence of record is insufficient to establish that the beneficiary is a qualified minister for the purpose of special immigrant classification.

A petitioner also must establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least 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.

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 391 (Comm. 1986).

The petition was filed on March 12, 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 March 12, 1999.

In this case, the church's pastor wrote that: "[The beneficiary] joined the [petitioner on] approximately January 15, 1999. He has been an integral part of our denomination and is the Head of the following departments: Outreach, and the Men's Group. He is also

a part of the Ministers in Training Department.

In a subsequent letter, the church's pastor wrote that:

For over two years now, [the beneficiary] has been actively and faithfully involved in carrying on the vocation of a minister in these above-mentioned areas.

During this time frame, [the beneficiary] has not been soliciting for funds or involved in supplemental employment to aid his vocation as a minister. As these critical needs are still present, [the beneficiary] has extended his efforts, his abilities and his time in helping to meet these needs. Within the past year he has also enrolled at the Moody Bible Institute in an effort to study and prepare himself for the various phases of ministry needs.

The director found that the evidence of record failed to demonstrate that the beneficiary had been performing his duties for at least two years prior to the filing of the petition. The AAO concurs.

In this case, 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 AAO is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

The petitioner also must demonstrate that a qualifying job offer has been tendered.

8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has not submitted a specific job offer to the beneficiary, has not identified the terms of remuneration, and has not shown that the alien would not be dependent on supplemental employment. Therefore, it has not tendered a qualifying job offer. For this reason as well, the petition may not be approved.



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.