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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

File: WAC-01-217-52933 Office: California Service Center Date: SEP 15 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]

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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Presbyterian Korean church. It seeks 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 that he may be employed as its director of Christian education.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had had two years of continuous experience in the religious occupation as required by the pertinent regulation.

On appeal, counsel states that the petitioner has properly documented the beneficiary's eligibility.

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 claims a congregation of 1200 members. It did not state the number of employees. The beneficiary is a native and citizen of Korea who was last admitted to the United States on June 12, 1992, as a B-1 visitor.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of employment in a religious occupation.

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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 April 11, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously carrying on the religious occupation since at least April 11, 1999.

The petitioner states that it has employed the beneficiary since September 1998. Copies of canceled checks made payable to the beneficiary by the petitioner for the period of April 1999 to April 2001 have been submitted for the record. They vary in amounts from $500 to $1,500 a month. Although a sample weekly schedule has been submitted, it is not clear from the documentation submitted whether the beneficiary's service to the petitioner during the qualifying period has been full-time, part-time, or intermittent.

The record also shows that during the qualifying period the beneficiary was a full-time student at Grace Mission University of Anaheim, California, during the spring and fall semesters of 1999, and during the spring and fall semesters of 2000.

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

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.