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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: CALIFORNIA SERVICE CENTER Date: SEP 23 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:

PUBLIC COPY

[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, California 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 him as an associate pastor at an annual salary of $36,000.

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.

On appeal, the petitioner's senior pastor asserts that the beneficiary has been working as a volunteer pastor at the church and it makes no difference to the beneficiary whether the church pays him.

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 an independent church. The beneficiary is a 41-year old citizen of Taiwan who last entered the United States as a R-1 nonimmigrant religious worker on September 12, 1996.

The sole issue to be addressed in this proceeding is whether the petitioner established that the 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 July 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 July 12, 1999.

In this case, the petitioner's senior pastor wrote CIS that: "[The beneficiary] served as a pastor at [redacted] from November 1997 to March 2000. He was with us from April 2000 to February 2001."

In response to a request for additional evidence, the petitioner submitted a letter written by the beneficiary stating that he had been working with the petitioner on a volunteer basis since it was founded in May 1999. The petitioner wrote the CIS that the beneficiary had been working with the petitioner as a volunteer since May 1999.

The director found that unpaid volunteer work does not equate to two years of continuous work experience.

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 the prior experience must have been full-time salaried employment in order to qualify, except for those engaged in a religious vocation.

The legislative history of the religious worker provision of the Immigration Act of 1990[1] 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 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.

In the absence of corroborating evidence in the form of W-2's and certified tax returns, AAO is unable to determine whether the beneficiary was engaged in a religious occupation during the two-year requisite period.

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 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.

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