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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 26 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant 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: SELF-REPRESENTED

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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4). The title of the job offered to the beneficiary has evolved over the course of the proceeding. The director determined that the petitioner had not established (1) its status as a qualifying tax-exempt organization, (2) that the position offered constitutes a qualifying religious occupation or vocation, or (3) that the beneficiary had the requisite two years of continuous work experience in the occupation or vocation immediately preceding the filing date of the petition.

On appeal, the petitioner submits additional statements and background documents.

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
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> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
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> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner's initial submission includes a certificate of exemption from the Massachusetts Department of Revenue, but this document establishes only exemption from state taxation, not from federal taxation. Therefore, the director requested documentation of the petitioner's federal tax-exempt status, such as a letter from the Internal Revenue Service (IRS) addressed to the petitioner.

In response to the director's request, the petitioner has submitted a copy of a 1975 letter from the Internal Revenue Service to the Board of Incorporators of the African Methodist Episcopal (AME) Church, Washington, D.C. The letter indicates "you and your local churches named in the group exemption roster you submitted are exempt from Federal income tax." The record does not contain the group exemption roster or any evidence that the petitioning church is on that roster.

The director, in denying the petition, observed that "no document specifically named [the petitioning] church as part of that larger organization" named on the federal tax exemption documents. Therefore, the director concluded that the petitioner has failed to establish its own status as a religious organization exempt from federal taxation.

On appeal, the petitioner submits a letter from the comptroller of the AME Church in Washington, D.C., establishing the required link between the petitioner and the national-level tax-exempt organization. The petitioner has thus overcome the director's finding in this regard.

The director's remaining findings are related to one another. The first of the two related issues is whether the petitioner has made a qualifying job offer. 8 C.F.R. § 204.5(m)(2) defines various categories of qualifying employment, including the following:

> *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.
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> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors,

> catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Bureau therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Related to the above issue is the regulatory requirement at 8 C.F.R. § 204.5(m)(1) that an alien seeking classification as a special immigrant religious worker "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."

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.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working in the same occupation as the position offered throughout the two-year period immediately preceding that date. This requirement relates to the nature of the job offered because, if the beneficiary has not worked in a qualifying religious occupation or vocation, then the beneficiary cannot meet the two-year experience requirement.

Pasto[redacted] of the petitioning church describes the beneficiary's background and work in a letter dated December 7, 2000:

> [F]rom 1984, as a licensed minister in the African Methodist Episcopal Church, [the beneficiary] has dedicated his gifts and talents to working with marginalized youth. Most recently, [the beneficiary] has used his skills to minister to the needs of at-risk youth in the City of Boston as a youth worker. As a youth worker, he has served young people in a variety of settings: public schools, the judicial system, hospitals, and even on the streets. . . .
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> In 1996, he came to [the petitioning] Church and joined the ministerial staff. From that time to the present, he has been active in church life as a member of the Men's Fellowship, Church School, Small Group Ministry, and ministerial staff while concurrently pursuing the academic and spiritual requirements to serve as an ordained minister in the AME Church. In addition, [the beneficiary] has attended the Center for Urban Ministerial Education at the Gordon-Conwell Theological Seminary and is currently enrolled in the New England Conference Ministerial Training Institute.

The petitioner submits a letter, dated October 4, 1999, confirming the beneficiary's enrollment at the seminary named above, and certificates from 1999 and 2000 confirming the renewal of the beneficiary's annual licenses to preach. The petitioner also submits a certificate, dated April 21, 2001, which indicates that the beneficiary has been "set apart . . . for the Office of Local Deacon" of the petitioning church. The certificate indicates that Bishop [redacted] recommend[s] him/her to all whom it may concern, a proper person to administer the ordinances of Baptism, Marriage, and Burial of the Dead."

The director requested "evidence that the beneficiary's primary duties, for the two years of qualifying employment, require specific religious training beyond that of a dedicated and caring member of the congregation." The director also requested evidence that the beneficiary's primary duties constitute traditional religious functions.

In response, the petitioner submits AME documents indicating that "a local preacher of two years good standing may be eligible for the office of Local Deacon . . . provided he/she satisfies the Annual

Conference in regard to the course of study specifically designed for the local ministry." As noted above, the beneficiary was not ordained as a local deacon until April 21, 2001. Thus, even if the position of local deacon is a qualifying religious occupation, the beneficiary did not hold that position for at least two years prior to the April 30, 2001 filing date. Rather, he had been a local deacon for only nine days as of that date.

The petitioner submits a letter, dated April 1, 2002, indicating that the beneficiary "is a current and very active student at" the New England Conference AME Church Ministerial Training Institute. Thus, regardless of the petitioner's prior references to the beneficiary as an "ordained minister," the beneficiary's ministerial training was still unfinished nearly a year after the petition was filed.

In a new letter, Pasto[redacted] repeats earlier statements regarding the beneficiary's background and states "[i]n 2001, the church body, officers and I enthusiastically requested the services of [the beneficiary] as an ordained local minister. . . . As an ordained minister, he has visited the sick, provided outreach services to the surrounding community, and inreach services to our own. . . . [The beneficiary] has delivered communion to the sick and imprisoned, led worship services and participated in funerals." Pasto[redacted] adds that the beneficiary "can also assist with weddings and baptisms," but he does not state that beneficiary has actually done so.[1] Pasto[redacted] refers to the beneficiary as "an ordained minister," but he does not indicate that the beneficiary can actually perform sacraments such as weddings and baptisms; he can merely "assist." Thus, it does not appear that the beneficiary is authorized to perform the full range of functions of clergy, and thus the beneficiary appears to be outside the regulatory definition of "minister" at 8 C.F.R. § 204.5(m)(2).

Pastor [redacted] describes the beneficiary's current duties:

> At present, [the beneficiary] works 40 hours a week as a street worker with our outreach program, Generation Excel. This intervention/prevention program . . . services young people who are involved in high-risk behaviors, such as gang activity, drugs, alcohol and sexual promiscuity. Many of these young men and women are court-involved. [The beneficiary] serves as an advocate for them with the schools, police and the judicial system. . . .
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> He will be offered the position [of] a case manager at a salary of $15,000 per annum with health benefits, to begin on May 1, 2002. His duties will include: gathering of intake information on participants; development of a plan for each participant with project coordinator; review and documentation of participant progress and problems; support of project coordinator in advocacy and enrichment activities.

Pastor [redacted] assertion that the beneficiary will "begin on May 1, 2002" indicates that the beneficiary did not hold the position of case manager before that time. Thus, there is no evidence

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[1] On appeal, Pastor [redacted] does state that the beneficiary "has assisted" with weddings and baptisms, suggesting that the beneficiary began these activities shortly before the denial of the petition.

in the record that the beneficiary worked for the beneficiary as a case manager during the two-year qualifying period that ended April 30, 2001.

The description of the beneficiary's position and duties does not readily suggest performance of traditional religious functions. The beneficiary's basic tasks as a case manager appear, instead, to involve secular social work. Pasto[redacted] asserts "the youth can participate in any of our programs without any involvement in the church's services or any specific spiritual commitment." Pasto[redacted] observation that the beneficiary's religious background is useful for those youths who "raise issues of a spiritual nature" does not make the beneficiary's work as a case manager a traditional religious function. Furthermore, the program in which the beneficiary is to be employed was established in 1990; it is not a "traditional" arm of the petitioner's denomination, whether or not a particular case manager is ordained as a local deacon.

The director denied the petition, stating that the beneficiary "has already been performing the delineated duties without first being ordained. The director found that this information "appears to indicate that the religious training is preferred but not required . . . in order to perform the duties." Therefore, the director concluded, "[t]he record does not establish that the beneficiary has been and will be employed in a religious occupation."

On appeal, Pastor[redacted] maintains that the beneficiary has performed duties that "can *only* be performed by ordained ministers," but the record contains nothing to show that a Generation Excel case manager must be an ordained minister. Having asserted that a given youth's involvement in Generation Excel can be entirely secular, the petitioner cannot now claim that the program is so pervasively religious that only ordained ministers can administer it. Other duties listed on appeal, such as "funeral services . . . weddings and baptisms" are not part of Generation Excel or among the duties of a case manager. The beneficiary's duties have changed very significantly, and therefore we cannot find that the beneficiary has, throughout the two years immediately prior to the filing date, performed the same duties for which the petitioner seeks to employ him in the future. In order to qualify for the immigrant classification sought, the beneficiary must have worked in a single religious occupation or vocation throughout the two-year qualifying period, and must have a job offer to continue working in the same occupation or vocation. The record demonstrates that such is not the case in this proceeding.

Pastor[redacted] contends "[a] person is a *minister* once he/she receives a license to preach." In *Matter of Rhee*, *supra* at 610, the Board of Immigration Appeals found that an alien claiming to be an ordained minister did not qualify for the classification because the ordination was "not [based] on any theological training or education" and because there was no evidence that the alien had actually participated in the performance of sacraments, consistent with the generally understood definition of "minister." The Board stated "[w]e do not agree that the issuance of a piece of paper entitled 'certification of ordination' by a religious organization should be conclusive as to who qualifies as a minister for immigration purposes." Materials submitted on appeal show that licensure to preach in the petitioning church, like the church in *Matter of Rhee*, is not based on theological training or education. Rather, "[p]ersons seeking license to preach in the A.M.E. Church shall be asked [a series of] questions" and then approved by various supervisory bodies. AME Church documents indicate that "candidates for the itinerant ministry

should be college graduates," but the record is not clear as to whether the beneficiary has ever been a member of the itinerant ministry. Materials in the record appear to discuss two separate career tracks, respectively involving itinerant or traveling ministers and local ministers. The beneficiary's ordination as a "local deacon" would appear to indicate the beneficiary's involvement in the latter track. The record certainly contains no documentation of the beneficiary's college education, if any. The same AME Church documents also indicate that the normal requirements can be waived in some instances.

Pastor [redacted] discusses the beneficiary's "status as a *licenciate* (one licensed to preach) and as a local *deacon* (a newly ordained individual). [The beneficiary] is now in the process of becoming an ordained *elder* (a fully ordained individual)." Thus, by the petitioner's own assertions, the beneficiary is not "fully ordained." Aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971). The petitioner cannot file a petition on behalf of a not-yet-qualified alien, on the expectation that the beneficiary will eventually complete his training. Furthermore, as noted above, the beneficiary was ordained as a deacon only days before the filing of the petition, and thus he was clearly not an ordained member of the clergy for the entire two-year qualifying period.

Even if the petitioner had shown that the beneficiary, throughout the two-year qualifying period, qualified as a minister under the regulations, the petitioner has not shown a reasonable connection between the activities performed by a Generation Excel case manager and the religious calling of a minister, as 8 C.F.R. § 204.5(m)(2) requires. The petitioner has also failed to show that a Generation Excel case manager is a traditional religious function of the petitioner's denomination.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.