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U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

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

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 30 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]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church, 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), in order to employ him as an outreach pastor at an annual salary of $16,120.

The director denied the petition, finding that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification and that the beneficiary had two years of membership in the denomination having a bona fide nonprofit religious organization in the United States.

On appeal, the petitioner submits additional documentation.

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, called the was established in 1897. It has the appropriate tax-exempt status. It declares 95 active members and five employees. The beneficiary is a 30-year old native and citizen of India who last entered the United States on November 19, 2000 as an A-2 non-immigrant.

The first issue to be addressed in this proceeding is whether the petitioner established that the beneficiary for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination that has a bona fide nonprofit religious organization in the United States.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification ... as a .. special immigrant religious worker. Such a petition may be filed by or for an alien, who ... for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.

The petitioner submitted a letter written by the Superintendent of the Maryland-Virginia Conference of the Free Methodist Church of North America stating that the Free Methodist Church of North America and the Methodist Church of India (the beneficiary's former employer) are both a part of the larger World Methodist Council. While the letter does not expressly state that the beneficiary had been a member of that denomination, it is implied, given that he served as an ordained pastor at the Methodist Church of India from April 1999 until his entry into the United States in November 2000, that he was a member of the

"larger World Methodist Council" denomination since at least April 1999.

On appeal, the petitioner states that the beneficiary has been a member of the World Methodist Church denomination for at least the two years immediately preceding the filing of the petition. The petitioner has established that the beneficiary satisfies this requirement.

The next issue to be addressed in this proceeding is whether the petitioner established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious vocation or occupation as defined in the regulations.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation . . . .

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

> *Professional capacity* means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.
>
> *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.

In the instant case, the petitioner proposes to employ the beneficiary as an outreach pastor.

The director determined that the petitioner failed to establish that the proffered position qualifies as a religious occupation. The director stated that it was not clear if the beneficiary's primary duties require specific religious training beyond that of a dedicated and caring member of the congregation and that the evidence failed to establish that the job duties are traditional religious functions above those performed routinely by other members.

The petitioner submitted a letter from the petitioning church's Assistant Pastor that states:

> [The beneficiary] is now in his second term . . . as outreach pastor of Layhill Church. His duties include:
>
> - perform responsibilities at 11 am service on Sunday
> - planning Friend's Day 3 times a year
> - leading prayer at midweek service on Wednesday evening
> - visiting the sick
> - establishing a Telugu-speaking congregation in Silver Spring
> - conducting 5 different home groups per month
> - leader of Care Group #1 which welcomes visitors, and functions one out of three months in rotation
> - He also cleans the church - 4 hours weekly

After a review of the record, it is concluded that the petitioner has not established that the position of "outreach pastor" constitutes a qualifying religious occupation.

The petitioner submitted no documentation that the position is a traditional full-time paid occupation in its denomination. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California,* 14 I&N Dec. 190

(Reg. Comm. 1972). The petitioner did not provide verification from an authorized official of the denomination indicating that permanent salaried employment in such an occupation is a traditional function within the denomination.

Second, the while the petitioner asserted that the beneficiary's job duties are of a religious nature, the evidence shows otherwise. Cleaning the church, planning events and welcoming visitors are more secular and administrative than religious in nature.

Beyond the decision of the director, the petitioner failed to demonstrate its ability to pay the proffered wage as required by 8 C.F.R. § 204.5(g)(2). Since the appeal will be dismissed for the reasons stated above, this issue need not be discussed further.

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.