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U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted in[redacted]

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

File: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 30 2003

IN RE: Petitioner: [redacted]
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:

[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, 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 a religious teacher at an annual salary of $24,000.

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 been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition. The director further found that the petitioner failed to establish that it is a qualifying religious organization.

On appeal, the petitioner submits a statement and 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, the [redacted] is affiliated with the Presbyterian denomination. The beneficiary is a 43-year old native and citizen of Korea who last entered the United States on March 28, 1998 as a B-2 nonimmigrant visitor for pleasure.

The first issue to be addressed in this proceeding is whether the petitioner established that it is a qualifying organization. On appeal, the petitioner submitted an IRS letter dated July 25, 2002, indicating that the petitioner has enjoyed tax-exempt status as a church since March 1977. The petitioner has established that it is a qualifying religious organization.

The next issue to be addressed in this proceeding is whether the petitioner established that the proffered position is a qualifying occupation.

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:
>
> * * *
>
> (C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required

degree must be submitted.

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

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.

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 the regulations. 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 petitioner describes the beneficiary's job duties in a letter dated November 26, 2001 as follows:

From March 1998 to date [the beneficiary] has been serving our Church as a Religious Teacher. In this capacity, [the beneficiary] has been responsible for teaching the Bible, Hymns, and the Korean Culture; as well as developing study courses,

> counseling students, and providing religious, moral and spiritual support and guidance to the children (and their parents) of the congregation.
>
> Consistent with the published "Constitution of the Presbyterian Church (U.S.A.) - Book of Order" which delineates our religious positions including their job descriptions and qualifications . . . the position of Bible Teacher includes job duties which are traditional religious functions within our faith - well above those routinely performed by others - and which clearly requires specific religious training well beyond that of a (merely) dedicated and caring member of the congregation.

The petitioner submitted a relevant excerpt from the Book of Order about Christian educators.

In review, the petitioner has established that the proffered position (religious teacher or Christian educator) is a qualifying religious occupation.

The next issue raised by the director is whether the petitioner established that the beneficiary had had the requisite two years of continuous experience in the proffered position.

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.

The petition was filed on February 8, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing in the capacity of a religious teacher since at least February 8, 1999.

In a letter dated August 7, 2002, the pastor of the petitioning organization wrote CIS that the beneficiary commenced employment with the petitioner in March 1998. The pastor submitted a statement signed by members of the petitioner's congregation attesting to the fact that the beneficiary had been serving the petitioning church as a

religious teacher from March 1998 to the present. The petitioner submitted copies of the beneficiary's Form W-2's and tax returns for the years 2000 and 2001. According to the Form W-2's, the beneficiary earned $18,750 in wages in 2000 and $24,000 in 2001 from the petitioning organization.

As noted by the director, CIS interprets its own regulations to require that the prior experience in a lay religious occupation to have been full time and salaried. The petitioner failed to explain why the beneficiary earned only $18,750 in 2000, less than the proffered wage. The petitioner failed to submit the beneficiary's W-2 and tax return for 1999. The amount on the 2000 W-2 does not reflect full-time continuous employment. This evidence is not sufficient to establish that the alien was continuously engaged in a religious occupation for at least two years 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.