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U.S. Department of Homeland Security

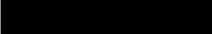
Citizenship and Immigration Services

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

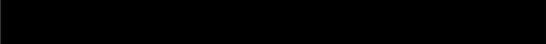


SEP 30 2003

File: 
EAC 01 178 51501

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: 
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)

IN BEHALF OF PETITIONER:


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.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner 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), to provide services as a Deacon and a Sunday School Superintendent. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition.

On appeal, counsel indicates only that the decision of the director did not take into consideration important supporting documentation, and asserts the decision is "arbitrary and capricious."

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The sole issue raised by the director to be addressed in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

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).

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

Such a petition may be filed by or for an alien, who (either abroad or in the United States) 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 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 for the organization or 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 Revenue Code of 1986 at the request of the organization. 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 23, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from April 23, 1999 until April 23, 2001. The petitioner indicated on the Form I-360, Petition for Amerasian, Widow, or Special Immigrant, that the beneficiary entered the United States on February 9, 1990. The petitioner submitted an affidavit from the beneficiary stating that he arrived on February 9, 1990, and does not have a Form I-94, Arrival-Departure Report, document. The petitioner also submitted a copy of the beneficiary's passport issued on April 27, 1992. The passport indicates it was "given at 346." No explanation was provided as to how the beneficiary obtained this passport after the date he allegedly entered the United States. The petitioner also submitted a copy of a "Certificate of Marriage" from the Marriage Registry at Lagos, Nigeria. This document indicates that the beneficiary married on October 18, 1997, and lists the beneficiary's "residence at time of marriage" as being in Lagos. No explanation was provided regarding when

the beneficiary left or reentered the United States.

The director's decision states:

The beneficiary has a Social Security Number, however, without W-2s and copies of the beneficiary's tax return, there is no evidence that the beneficiary ever worked for the petitioner. The record does not establish that the beneficiary has the required two years of experience in the religious occupation.

Letters from the petitioner dated April 7, 2001 and February 26, 2002, indicate that the beneficiary has worked as a Sunday school superintendent since an unspecified date in 1997, and was "inaugurated" as a deacon in June 1999. The letters state that the beneficiary has served in both positions. The record reflects that the year the beneficiary allegedly began working for the petitioner, is also the year he was married in Nigeria, and spent an undisclosed amount of time there.

In the letter dated February 26, 2002, the petitioner states that the position offered is for "20-25 hours weekly" with an "annual salary of \$9,500." A second, undated letter from the petitioner also details the hours and days that the beneficiary works. In response to the director's request for additional evidence, the petitioner submitted the beneficiary's 2001 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return. The 2001 IRS W-2 forms were not submitted. The 2001 IRS Form 1040 submitted does not reflect a salary of "\$9,500." The tax form at Schedule C, reflects an income of \$17,000, and states that the beneficiary's principal business or profession is "Cab Services." Tax documents, and/or other objective evidence, were not submitted for the years 1999 and 2000.

On appeal, no additional information was submitted.

Upon review of the record, the evidence submitted does not establish that the beneficiary was continuously engaged in a qualifying religious occupation or vocation for the two years prior to the filing date of the petition.

Beyond the decision of the director, the petitioner also has not established that the beneficiary is qualified to engage in a religious vocation or occupation.

The petitioner wrote on February 26, 2002, "As a Deacon, [the beneficiary] is invested with the rite of performing all ecclesiastic duties in place and stead of the pastor, helps [sic] in setting educational and church policies." Article VII of the petitioner's "Constitution and By-Laws of Bethel Assembly of God," indicates that the deacons "serve in an advisory capacity in giving

assistance to the pastor in promoting the spiritual welfare of the church," and states they "shall minister under the guidance of the pastor." The submitted "ByLaws [sic] for District Affiliated Assemblies," at Article II, Section 3, indicates that the position of deacon is nominated, elected by a majority vote at the annual business meeting, and the "term of office shall be for one year from the time of election." The petitioner has not submitted minutes of the annual business meeting or other evidence that the beneficiary was elected to ongoing terms as a deacon of the church.

Regarding the beneficiary's qualifications to perform the duties of a deacon, the record contains a certificate for successful completion of the course "Education Ministry of the Church," dated January 18, 2001, signed by Rev. [REDACTED] who is described by the petitioner as an approved religious worker in the church. The date of this certificate falls long after the beneficiary was said to be performing duties as a Sunday school superintendent and deacon. The record does not contain further evidence of the beneficiary's specialized training, ordination, or educational achievements. The petitioner has not shown that the beneficiary's activities for the petitioner require any religious training or qualifications.

In addition, the petitioner has not shown that the beneficiary has received a qualifying job offer, or that it has had the ability to pay the beneficiary the proffered wage since the filing date of the petition. The petitioner failed to submit the requested evidence as required under 8 C.F.R. § 204.5(g)(2) to demonstrate its ability to pay the beneficiary. As noted above, the submitted IRS Form 1040, U.S. Individual Income Tax Return, demonstrates only the beneficiary's earnings from sources outside of religious work. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.