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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 Eye Street N.W.
Washington, D.C. 20536

File: WAC-98-236-50556 Office: California Service Center Date: SEP 30 2003

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 the 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 history of this case is confusing. It was denied on October 26, 2000, but then reopened on June 26, 2001. It was denied again on June 26, 2001, but reopened again on February 8, 2002 and denied the same day. The denial of February 8, 2002, by the Acting Director was sent to the petitioner on Friday February 21, 2002. Appeal by the petitioner was filed on March 21, 2002. That appeal will now be considered.

The petitioner is a church affiliated with the Pentecostal denomination. It 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), in order to employ him as an associate minister.

The director denied the petition finding that the beneficiary's claimed voluntary service with the petitioner did not satisfy the statutory requirement that he have been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, the petitioner submits a statement addressing the historical events of the case and submits additional evidence.

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 beneficiary is described as a native and citizen of Nigeria who last entered the United States on July 17, 1998, as a B-2 visitor, with authorized stay until January 16, 1999. The record therefore reflects that the beneficiary has remained in the United States in an unlawful status. The petitioner disclosed at the space provided on the petition form that the beneficiary has not worked in the United States without authorization.

The issue to be examined in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of qualifying continuous work experience immediately preceeding the filing of the petition.

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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 September 1, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a religious occupation for at least the two years since September 1, 1996.

In response to a request for additional evidence, the petitioner's president stated, in pertinent part, that:

> The beneficiary has been a full time minister with us working with UCCC Nigerian branch as the executive interpreter couple[d] with ministrations, until 1998 when he was appointed to work with the headquarters office here in Los Angeles as an associate minister at Tabernacle Community Church which also is a member church with the UCCC.

In a separate letter responding to the Bureau's request, the petitioner's president stated, in pertinent part, that:

> It is very important for us to have them (the beneficiary and his family) approved, [and] for the beneficiary to join our ministries as an interpreter, which has been selected by the Board of Bishops to be [a position of] travel with the Presiding Bishop as he travels to different countries overseeing our branches.

In a letter dated May 15, 2000, the petitioner's president stated that the beneficiary was ordained as a minister in 1996 and that the beneficiary has served the ministry prior to and subsequent to that date. The president stated that the beneficiary does not receive a salary, but is compensated by "free will" offerings as he ministers. The petitioner's president further stated that the United Council of Christian Churches consists of 545 pastors and ministers, none of whom receive a salary, but are compensated by free will offerings.

On appeal, the petitioner's president submitted a letter dated March 19, 2002, in which he stated that the beneficiary's interpreting is a part of his regular duties and that the beneficiary interprets local dialects in Nigeria. The president further stated that the church in Los Angeles has a good population of Nigerians and that the beneficiary's skills are invaluable in that setting.

In a letter dated November 6, 2001, a copy of which was submitted on appeal, the petitioner's president stated that the beneficiary was in Nigeria during 1994, 1996, and 1997. The petitioner's president also stated that the beneficiary and other full time pastors had been selected by the UCCC to receive rent paid by member churches and a $600 stipend in the future.

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. The regulations are silent on the question of volunteer work satisfying the requirement. The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id*. Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. *See* 8 C.F.R. § 204.5(m)(4). 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, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, CIS must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. Nor is there any means for the Bureau to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For all these reasons, the Bureau holds that lay persons who perform volunteer activities are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

Here the record is unclear as to exactly where the beneficiary was working during the period from September 1996 to the filing of the petition in September 1998. The petitioner does, however, admit that the beneficiary has been an unpaid member of the church since 1996, and that he has been provided "free will" stipends as the congregation saw fit during the period of time in question. Therefore, CIS is unable to conclude that the beneficiary had been engaged in a full time paid religious occupation during the two-year qualifying period. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not demonstrated 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, that it is a qualifying tax exempt organization, and that it has tendered a qualifying job offer. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely 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.