U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

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

[redacted]

SEP 30 2003

File: [redacted] Office: Nebraska Service Center Date:

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 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.

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a church. 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), to perform services as a part-time minister.

The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel for the petitioner submits a brief and amends the proffered position to full-time employment.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in § 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).

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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.

The first issue 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 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.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

The petitioner in this matter is a church affiliated with the General Conference of Seventh-Day Adventists Churches and claiming the appropriate tax exempt recognition as a member church. The petition was filed on April 9, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a minister from April 9, 1999 until April 9, 2001. The record indicates that the beneficiary last entered the United States as a B-2 visitor on March 7, 2001. The petition, Form I-360, indicates that the beneficiary has not worked in the United States without permission.

The petitioner provided a "certificate of employment" dated February 14, 2001 reflecting the beneficiary's employment from May 25, 1963 to February 15, 2001. From January 1, 1997 to July 31, 2000, the beneficiary was employed by the Seventh-day Adventists

demonination as a "secretary", and as a "field secretary" from August 1, 2000 to February 15, 2001. The beneficiary's employment as a pastor occurred from May 25, 1963 to February 16, 1968, and from February 17, 1986 to December 31, 1996, the beneficiary held positions as a principal, president, "deplt" director and secretary.

The petitioner also provided a certificate of ordination issued in 1968, an undated certificate of membership, and a certificate of continuing education unit credit reflecting that the beneficiary completed a four day course in Multiply Your Ministry in 1994.

In response for additional evidence, the petitioner asserted that the beneficiary is a retired Seventh-Day Adventist minister and is receiving retirement funds ($1,000 a month) from its denomination. The petitioner further asserted that between February 15, 2001 and March 7, 2001, the beneficiary and his wife "were moving to the U.S. and were not involved in the business or volunteering activities during this period." The petitioner stated that the beneficiary will be paid a monthly salary of $1,000 and will devote 25-30 hours per week towards the proffered position.

On appeal, counsel asserts that the beneficiary has been a long-serving minister in the Seventh Day Adventists church and that the beneficiary was on vacation during the seven week period immediately preceding the filing of the petition. Counsel argues that the beneficiary's vacation did not interrupt that service or his status as a serving minister in the denomination. Counsel states that the positions of secretary and field secretary are "elected offices traditionally occupied by pastors in the denomination." Counsel claims that individuals holding these positions continued to perform pastoral duties along with administrative duties.

Counsel provides a letter from an official of petitioning church who asserts that a division secretary is an elected position while a division field secretary is an appointed position, and that "a minister is selected for each office that has demonstrated exceptional skill as a leader in all phases of ministerial work." The official provides the job description of the past positions of secretary and field secretary.

In review, the petitioner has not overcome the director's concern.

First, the petitioner in its letter dated January 14, 2002, indicated that the beneficiary "is a retired SDA minister." Therefore, the beneficiary was not engaged in the full-time occupation of a minister during the two-year requisite period preceding the filing of the petition.

Second, except for a mere statement (of the retirement compensation), the record does not contain any evidence that the beneficiary was paid wages by the foreign organization during the entire two-year period immediately preceding the filing of the petition, or that the work performed was on other than a volunteer

basis. The plain meaning of the term "occupation" is an individual's primary endeavor and means of financial support. The Bureau is not persuaded that a secretary/field secretary could be employed in a full-time capacity in a religious organization. Absent documentation showing that each position is traditionally a permanent salaried occupation with the denomination, and evidence of the beneficiary's employment history such as his foreign tax documents, it cannot be concluded that the petitioner has overcome the director's concern.

The second issue to be addressed in this proceeding is whether the petitioner has the ability to pay the beneficiary the proffered wage.

Regulations at 8 C.F.R. § 204.5(g)(2) require that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner in this matter submitted a copy of a faxed 2000 and 2001 financial statement. This document, however, does not satisfy the regulatory requirement. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the necessary documentary requirement.

Counsel's reference, on appeal, to a previous decision issued by the AAO has no relevance in this matter. The beneficiary did not seek to immigrate to the United States as a religious worker as he was admitted as a B-2 visitor."

Counsel's claim that the beneficiary was on a seven week vacation prior to the filing of the petition is not being disputed as the beneficiary's I-94 clearly indicates his admission into the United States as a visitor. The fact remains that the beneficiary was not in an employed capacity during that period of time as the foreign organization clearly indicated that his duties as a field secretary ended on February 15, 2001. There was no indication that the beneficiary was coming to United States for the sole purpose of carrying on a religious vocation or occupation. The beneficiary, therefore, was not continuously engaged in a religious occupation during the two-year requisite period.

Finally, the petitioner first proposed to employ the beneficiary as a part-time minister at a monthly salary of $1,000 ($12,000 a year). In filing the appeal, the petitioner revises its proposal to employ the beneficiary in a full-time capacity at a yearly salary of $24,000).

A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material

changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to the Bureau's requirements. *Matter of Izumii*, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998). The petitioner's revision of the proposed position constitutes an impermissible material change to the petition and, therefore, the petition will not be approved.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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 within 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).

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.