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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent unwarranted invasion of personal privacy

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

[redacted]

File: WAC-01-218-51517 Office: California 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 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 Acting Director, California 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 "missionary evangelist" at a salary of $350 per week.

The acting director determined that the beneficiary's volunteer work with the petitioner was insufficient to satisfy the requirement that he had continuously engaged in a qualifying religious occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel for the petitioner submits additional documentation along with a letter from the petitioner's reverend stating that the beneficiary performed two years of full-time salaried religious work immediately prior to the filing of the petition.

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).

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.

At issue in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous work experience in the proffered position.

The petitioner is a church recognized by the Internal Revenue Service with the appropriate tax exempt status. The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a missionary from April 30, 1999 until April 30, 2001. The record indicates that the beneficiary last entered the United States as a B-2 visitor on July 26, 2000. The record reflects that the beneficiary remained in the United States beyond her authorized stay and has resided since such time in an unlawful status. The petition, Form I-360, indicates that the beneficiary had not worked in the United States without permission.

The petitioner provided a translated document from the pastor of the foreign church, [redacted] in Korea describing the beneficiary's work history as follows:

> From June 1997 to December 1999, the beneficiary worked 44 hours per week as a church member. The beneficiary visited church members' homes to help for home-service, provided counseling for church member about their conflicts at home, and helped beginners for their growth in faith.
>
> From January 2000 to June 2000, the beneficiary worked 44 hours per week as an

> education missionary who was in charged of religious education for church members, guided Sunday services, supervised Sunday school teachers and the operation of the church's education programs.

The petitioner also provided a translated document reflecting the beneficiary's compensation by the foreign church from July 1988 until June 30, 2000.

The petitioner indicated that the beneficiary has been a full-time education missionary at the petitioning church, [redacted] in Redondo Beach, California since August 1, 2000. The petitioner asserted that the beneficiary was paid $150 a week, but also received supplemental financial support remitted from Korea. The petitioner described the beneficiary's duties as:

> visiting church member's homes, and preparing for religious education. Preparing for Friday service, leading the services. Leading Sunday service and religious education.

The petitioner listed the duties of the proposed position of "missionary evangelist" as:

> help spread the words of Christ through home-visits of congregation members, providing counseling and helping the beginners for their spiritual growth. In charge of the religious education of the church members, supervising the Sunday school teachers and guiding the operation of the church's educational system.

Counsel, on appeal, provides copies of the beneficiary's 2000 and 2001 individual income tax returns which revealed secular employment as a self-employed consultant. Counsel also provides four cancelled checks from the petitioner dated April 1, 2001, June 30, 2001, December 1, 2001, and December 30, 2001 addressed to "Ming Management" for rental of an apartment for the beneficiary.

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

> *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.

On review, it is concluded that the petitioner has failed satisfy

its burden of proof. First, the petitioner has not shown that the position of "missionary evangelist" is a qualifying religious vocation or occupation, since those duties identified indicate that this position consists of activities normally expected of an active member of a religious congregation rather than a position that would be filled by a salaried employee who completed training in preparation for a career in religious work. Further, absent a description of the size of the congregation, the nature of the services offered and the number of members utilizing these services, the Bureau cannot reasonable conclude that the proposed position is credible as a full-time permanent position.

Second, the beneficiary's individual income tax returns during the two-year period reflect his only declared income as a self-employed consultant. There is no indication whether the wages ($2,053 for 2000 and $5,014 for 2001) listed in business income of the tax returns represent the income the beneficiary purportedly received as salary from the church. Therefore, the petitioner's claim that the beneficiary's income tax returns support the church's compensations is not persuasive. In addition, three of the four cancelled checks were issued subsequent to the two-year period and, therefore, have no relevance in establishing the beneficiary's remuneration. Furthermore, the cancelled check for April 1, 2001 does not demonstrate that the beneficiary received remuneration as said check was addressed to someone other than the beneficiary.

Third, the petitioner failed to provide corroborative evidence of the beneficiary's foreign employment. The petitioner did not provide documentation such as the beneficiary foreign tax documents or other comparable indicia. The Bureau has no means to verify that the alleged foreign employment was a full-time continuous, or a qualifying religious occupation with a qualifying affiliated religious organization. Simply furnishing a letter purportedly from a foreign employer is not sufficient to satisfy the petitioner's burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec., 190 (reg. Comm. 1972).

Beyond the discussion of the director's decision, the petitioner has failed to demonstrate eligibility on other grounds.

8.C.F.R. § 204.5(m)(4) states that the petitioner must submit a job offer showing how the alien will be remunerated and demonstrate that she will not be dependent on supplement employment. It is noted that the beneficiary is married with two dependent children. Hence, the record is not persuasive in demonstrating that the beneficiary would subsist on the wage of $350 per week without resorting to supplemental employment.

Pursuant to 8 C.F.R. § 204.5(g)(2) the petitioner is required to submit its annual reports, federal tax returns, or audited financial statements to demonstrate its ability to pay the proffered wage. The petitioner failed to submit the required documentation.

As the appeal will be dismissed on the grounds discussed, these

issues need not be examined further.

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).

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.