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U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

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

[redacted]

SEP 30 2003

File: WAC 01 295 56657 Office: CALIFORNIA 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:

SELF-REPRESENTED

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 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the case remanded.

The petitioner is a church, seeking classification of the beneficiary as a special immigrant minister 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 a minister.

The director denied the petition, finding that the petitioner failed to establish 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. The director further denied the petition, finding that the petitioner failed to establish that the proffered position is a permanent one.

On appeal, an official of the church submits a brief and 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 petitioner in this matter is church affiliated with the [redacted] denomination that is headquartered in the Philippines. The petitioner established that it is a qualifying religious organization. The beneficiary is a native and citizen of the Philippines who last entered the United States as a R-1 nonimmigrant religious worker on December 25, 1999.

The first issue raised in this proceeding is whether the petitioner established that the proffered position is a permanent one. The director denied the petition, in part, because he determined that the petitioner had failed to establish that it was offering the beneficiary a permanent position. The director based his decision on a letter from the petitioner that stated that the beneficiary's assignment was for three years. This portion of the director's decision shall be withdrawn. In these matters, it is the nature of the petitioner's need that is controlling. The record establishes that the beneficiary had been offered a permanent position, albeit a three-year assignment. The petitioner has overcome this objection of the director's decision. *See North American Industries, Inc. v. Feldman*, 722 F.2d 893 (1st Cir. 1983) and *Matter of Artee Corp.*, 18 I&N Dec. 366 (Comm. 1982).

The next issue to be addressed in this proceeding is whether the petitioner established that the beneficiary has been continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

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.

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 petition was filed on September 24, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least September 24, 1999.

In this case, two officials of the petitioning church's district office certified that the beneficiary had served the church in Manila from May 1998 to December 1999, in Las Vegas, Nevada from December 1999 to August 2001, and in San Francisco, California from August 2001 to the present for the petitioner.

Officials of the petitioning church wrote CIS that:

> [The beneficiary] is currently employed by the Church as Resident Minister of our San Francisco, California congregation. Prior to his designation as resident minister of San Francisco, California, he served as resident minister of our Las Vegas, Nevada congregation, and in various congregations of the Church in the Philippines.

The petitioner submitted the beneficiary's Forms W-2 for 2000 and 2001 indicating that the beneficiary was receiving a salary from the petitioner.

The director determined that because the petitioner failed to produce evidence that the beneficiary had been paid for his services in the period beginning September 24, 1999 to December 31, 1999, he failed to establish that the beneficiary had been continuously carrying on the vocation of minister in the two-year requisite period.

On appeal, the petitioner submits a certification written by an official of the petitioning church stating that the

beneficiary received a weekly clergy allowance of P3,669.00 from September 24, 1999 to December 31, 1999 while still assigned in the Philippines.

In review, the evidence is insufficient to establish that the beneficiary was solely and continuously carrying on the vocation of minister throughout the two-year requisite period. Certified tax returns and W-2 forms or their Philippine equivalent would be more persuasive evidence than the certification of an official of the petitioning church located in the United States.

Beyond the decision of the director, a petitioner also must establish that the beneficiary is qualified as a minister as defined in the regulations.

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:
>
> (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.
>
> (B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

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

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the

> activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The petitioner submitted a "certificate of ordination" dated May 7, 1994, issued by the petitioning church, stating that the beneficiary is a minister of the gospel. The petitioner also submitted a letter from an authorized official of the petitioner's denomination stating that the beneficiary has authorization to conduct worship and to perform other duties usually performed by authorized members of the clergy.

The evidence of record is insufficient to establish that the beneficiary is a qualified minister for the purpose of special immigrant classification.

In order to establish that an alien is qualified as a minister of religion for the purpose of special immigrant classification, simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). A lay preacher is not eligible. 8 C.F.R. § 204.5(m)(2). Here, there is insufficient evidence that the beneficiary has completed his theological education. The case will be remanded to allow the director to request the beneficiary's transcripts.

Another issue that the director failed to address is whether the petitioner demonstrated its ability to pay the proffered wage.

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

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

According to CIS records, the petitioner has filed at least twenty petitions for alien workers. The director must request that the petitioner inform CIS as to the exact number of petitions filed for the San Francisco church. The petitioner must specify the wages offered and provide proof of its ability to pay the sum of those wages.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn and the case is remanded for action consistent with the discussion above and the issuance of a new decision.