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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, D.C. 20536



SEP 30 2003

File:  Office: CALIFORNIA SERVICE CENTER

Date:

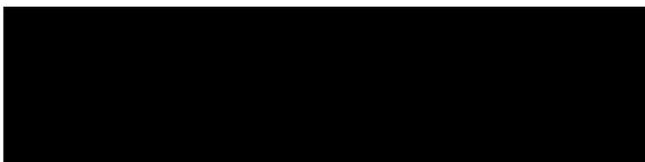
IN RE: Petitioner:
Beneficiary:



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)

ON 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 the Service 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 appeal will be dismissed.

The petitioner is a non-profit educational and medical institution, affiliated with the [REDACTED]

[REDACTED] 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), in order to employ him as a teacher at a monthly salary of \$1,200 plus housing and additional benefits.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner 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 is an institution that includes [REDACTED] an [REDACTED] a food service division, a natural foods store and a health clinic. The beneficiary is a native and citizen of Nigeria.

The first issue in this proceeding is whether the beneficiary had been continuously and solely carrying on a religious occupation for 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.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 30, 1999.

The petitioner provided a Form W-2 for the beneficiary's 1999 wages paid by the Central States Conference of the [REDACTED]. The petitioner stated that the beneficiary worked for Central States Conference of the [REDACTED] from May 1999 to September 1999 as a Bible health teacher and student counselor.

The petitioner submitted a letter written by the Personal Ministries Director of the [REDACTED] church stating that the beneficiary volunteered his services from October 1999 to April 2001 as a personal ministries director, spending at least 30 hours a week on church

assignments including teaching, for which he received free room and board.

The petitioner submitted a letter from the managing agent of [REDACTED] doing business as the [REDACTED] that states that the beneficiary worked at [REDACTED] from January 2000 to December 2000, and that "[the beneficiary] only took a job at [REDACTED] to support his family, while at the same time maintaining his job [at] [REDACTED] and [REDACTED] [as] stipulated by INS." The petitioner submitted Form W-2's issued to the beneficiary for his 2000 earnings at [REDACTED] and another for wages paid by [REDACTED]. The petitioner indicated that [REDACTED] bought [REDACTED]. The letter further states that the beneficiary provided biblical counsel, bible study and health seminars to patients at [REDACTED].

It is noted that the petitioner submitted a copy of the beneficiary's Masters degree that he received in March 1, 2000. This degree suggests that the beneficiary was also a student in 1999 and 2000.

The petitioner submitted a Form W-2 issued to the beneficiary for wages earned in 2000 at Christian Record Services, a publisher of literature for the blind.

The petitioner stated that the beneficiary did not commence employment with the petitioner until August of 2001.

The director concluded that a claim of voluntary service was insufficient to satisfy the requirement of having been continuously engaged in a religious occupation for the two-year period immediately prior to the filing of the petition. The AAO concurs.

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. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the 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.

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.

On appeal, the petitioner asserts that one of its representatives had underestimated the amount of time the beneficiary spent on his duties. The petitioner asserts that the beneficiary was continuously employed as a teacher for a myriad of [REDACTED] affiliates. It is somewhat an anomaly that the beneficiary was employed as a teacher at a retirement home and a publishing company.

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.