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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

PUBLIC COPY



File: [REDACTED]
LIN 01 143 52437

Office: NEBRASKA SERVICE CENTER

Date: APR 17 2003

IN RE: Petitioner: [REDACTED]
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.

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a school. 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 teacher. The director determined that the petitioner had not established that the beneficiary was qualified for a religious worker position within the religious organization, or that the position qualified as that of a religious worker.

On appeal, counsel submits a brief.

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).

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.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The issues raised by the director were whether the petitioner had established that the position qualified as a religious occupation and that the beneficiary was qualified as a religious worker.

To establish that the job offered is a religious occupation, a petitioner for a special immigrant religious worker must show the religious nature of the work, the religious training required to do the job, and how the alien has met the training requirements. To establish that the job offered is a religious vocation, a petitioner must show that the job requires the taking of vows or a permanent commitment to a religious life, and that the alien has taken the requisite vows or made the requisite commitment.

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.
- (C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or
- (D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

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

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

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.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows.

The director found that the petitioner had not provided a detailed description of the job duties for the position offered, identified

the subject(s) taught by the beneficiary, or provided any evidence of the beneficiary's qualifications to perform the duties of a religious vocation or occupation.

The petitioner indicated that no training or education was required to enter the position other than a "commitment [to] and knowledge of the Apostolic Christian Church." The petitioner had not provided evidence of this commitment or described how the commitment differed from that of its dedicated church membership. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In a letter dated March 5, 2001, the petitioner stated that the Heritage Private School, Inc., a "para-church" school, teaches subjects as mandated by law. The petitioner asserted that the beneficiary had been employed full-time at the school as a teacher in multi-grades since 1997, and that she now teaches fourth and fifth grades. The petitioner also stated that from 1994 to 1997, the beneficiary had been employed as a teacher at the Minto Meadow Parochial School in Harriston, Ontario, Canada, and that her previous employment from 1991 to 1993 was as a teacher at the Beaver Valley Parochial School in Mt. Forest, Ontario, Canada.

In response to a request for additional evidence, the petitioner stated that the beneficiary is highly qualified for the position due to her religious background, and that the beneficiary's duties are not performed by volunteer members of the congregation. The petitioner stated that teachers in its school must be members of the Apostolic Christian Church of America and must support the school. The petitioner also stated that those individuals who are not members of the Apostolic Christian Church would not be permitted to teach at the school. The petitioner asserted that the beneficiary "daily performs duties that are related to the traditional religious functions of the Apostolic Christian Church."

Here, the petitioner indicated that the minimum requirement for the position is not a teaching degree, licensure or teaching experience, but that the individuals "completed the steps necessary to be members of the Apostolic Christian Church," as established by the governing body of the church. The petitioner also stated that "[f]ew individual [sic] who meet the requirements are willing to teach; thus, at times the search leads to those previously from other areas, such as Sister Johanna."

The petitioner also submitted a statement regarding the petitioner's requirements for instructors:

- [T]eachers at Heritage Private School shall have

received a bachelor's degree or the equivalent thereof from a recognized college or university (this requirement may be waived upon approval by the board)

- [T]eachers must be members of the Apostolic Christian Church of America and must support the school

It is noted that the school's curricula include no religious courses, but those typically offered in a grade school or high school. "General" courses offered include: language arts, social studies, mathematics, science, health, physical education, fine arts and first aid. Courses in the high school curriculum include English, mathematics, social studies, science, and electives in fine arts, government and language. The curriculum guide states: "[W]hile no Bible classes are offered, the curriculum was chosen carefully to emphasize a Biblical life-style consistent with Biblical teachings."

In a letter dated December 14, 2001, the petitioner stated that the beneficiary serves an essential role in the operation of its school, and that she has worked at the school for over three years. The petitioner stated that the curricula are consistent with the Word of God and that the atmosphere of the school strives to relay Biblical principles, respect, and "reinforced discipline." The petitioner also stated that due to its small size of 75 students, it does not have an administrator, but is governed by a board consisting of members of the Apostolic Christian Church.

On appeal, the petitioner has obtained new counsel. Counsel states that the director's decision is factually and legally erroneous. Counsel asserts that the petitioner requires that faculty be members of the Apostolic Christian Church, and that this, combined with the beneficiary's experience and qualifications and the fact that membership in the denomination requires a sequential completion of specific religious steps which take several months, satisfies the requirements of the regulations. Counsel states that this requirement is necessary to accommodate and reinforce the unique beliefs of the church in its administration of the curricula. Counsel, summarizing the doctrine of the Apostolic Christian Church, states that only those who have experienced a permanent and full conversion are eligible for membership, and that it is a "lengthy and time-consuming process, lasting between four months to two years." Counsel states that this membership is not an automatic right, but that conviction, an ongoing commitment, establishing a personal relationship with Christ, and exhibiting that conversion in daily life proves to the Elder Bishop and the congregation that the individual has become a member of the church. Counsel summarizes the thirteen steps to membership, from "Hearing the Truth," through confession, restitution, baptism, and receiving the "Holy

Kiss" from other members.

Counsel also outlines the beliefs of the religion, and stresses that these unique beliefs manifest themselves in the school's curricula. Counsel asserts that the petitioner uses Christian publications but makes adjustments to accommodate the beliefs and tenets of the Apostolic Christian Church, and that although the teachers use a standard Christian curricula, the school must hire teachers that follow the doctrines of the Apostolic Christian Church to ensure that the principles of the church are taught.

Counsel states that the beneficiary has been a member of the petitioner's denomination since November 5, 1988, and reviews her previous teaching history. Counsel asserts that the beneficiary joined the petitioner in 1997 after obtaining a temporary religious worker visa and that she has taught at the petitioner's school since that time. Counsel adds:

[H]er foremost duties included to [sic] providing a stable spiritual environment for her students, and selecting, preparing, and teaching material consistent with the doctrine of the Apostolic Christian Church.

Counsel asserts that all instruction at the school is based upon modifying Christian doctrine into the curricula to accommodate the beliefs of the Apostolic Christian Church and that the beneficiary does this, provides spiritual guidance, and works closely with parents to achieve the petitioner's religious goals.

Counsel argues that according to the regulations, the position of a religious instructor qualifies as that of a religious occupation, and that the position, as identified by the petitioner, thus also qualifies. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The position, as identified, however, is as a teacher at an organization recognized by the Internal Revenue Service as a "school" and not as a religious organization (see additional discussion below).

Counsel also cites *Tenacre Foundation v. INS*, 78 F. 3d 693, 697 (D.C. Cir. 1996) and states that, based on the findings in *Tenacre Foundation v. INS*, the Bureau must accept the explanation of the petitioner as to what it means to be functioning within the preferred religious occupation of a teacher at its school. The Bureau rejects these arguments of counsel. First, counsel has not demonstrated that the facts in *Tenacre Foundation v. INS* are analogous to those in the instant petition, as the former pertained to temporary religious workers and issues regarding the qualifications of an individual still involved in receiving

training or education in nursing. 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).

Counsel also cites several other cases and unpublished decisions. The circumstances of these cases, however, differ from those in the instant petition. Further, while 8 C.F.R. § 103.3(c) provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel states that the beneficiary is qualified for the position of a religious worker based upon: her experience as a teacher, her participation in the petitioner's services and in community service programs for over 15 years, her presentation of religious lessons, her counseling of students and their parents, and her religious commitment. Counsel also states that the beneficiary has several years of experience as a "para-church teacher at parochial schools" in Canada.

Counsel also has submitted a letter from the petitioner supporting counsel's arguments. The petitioner also confirms that the beneficiary modifies the curriculum to conform within the faith of the Apostolic Christian Church and incorporates its doctrines into the teachings.

Included in the record on appeal is a letter dated March 18, 2002, from the bishop of the Apostolic Christian Church of South Medina Line Road, Wadsworth, Ohio. In his letter, the bishop describes in detail the tenets of the religion and its origins and the steps required in becoming baptized in the faith.

Also included in the record are letters from the parochial schools where the beneficiary was previously employed as a teacher from 1991-1997. The writers indicate that the beneficiary completed the required teacher's training with both writers referring to their schools as "Mennonite" schools where the beneficiary taught various grades and incorporated Bible studies into their respective curricula.

Counsel also has submitted extensive documentation, publications, and literature referring to various Christian tenets and to the beliefs of the Apostolic Christian Church.

As substantiated by the extensive documentation submitted in support of the beneficiary, it is evident that the petitioner

considers the beneficiary to be a competent and highly regarded teacher at the petitioner's school. However, while the petitioner indicates its own minimum requirements for the position (that teachers at the school have a bachelor's degree or receive a waiver from the "board"), the petitioner has not submitted any evidence of the beneficiary's completion of such a degree program or of the waiver.

The petitioner has not demonstrated that its position of "religious teacher" is a qualifying religious vocation or occupation, since those duties identified indicate that this position consists of activities normally expected of an instructor or teacher rather than a position that would be filled by an individual who completed training in preparation for a career in religious work. Further, the record fails to reflect that the training obtained by the beneficiary qualifies her to assume the position of a religious worker for the petitioner. While the beneficiary has taken the requisite steps to be indoctrinated into the precepts of the religion and is an active member of the congregation, she has not been shown to be qualified to engage in a religious vocation or occupation. For these reasons, the petition may not be approved.

A pivotal issue not addressed by the director in his decision is whether the petitioner qualifies as a bona fide nonprofit religious organization as stated in 8 C.F.R. § 204.5(m). This section states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

- (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
- (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization;

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner has submitted a letter of recognition issued by the IRS on May 29, 1973, to the Apostolic Christian Church of America, in Peoria, Illinois, recognizing the organization as exempt under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. In this letter, the IRS recognized all local churches named in the group exemption roster submitted by the parent organization in 1973. The petitioner, however, has not submitted evidence that its organization is one of those listed in the 1973 roster, or that the IRS has recognized a subsequent roster including the petitioner.

Also included in the record is a letter of recognition from the IRS to the Heritage Private School, in Rittman, Ohio, dated December 29, 1994. This letter grants exemption to the Heritage Private School as a foundation and publicly supported organization described in section 509(a)(1) and 170(b)(1)(A)(ii) of section 501(c)(3) of the Internal Revenue Code, and not section 170(b)(1)(A)(i) as it relates to religious organizations. The IRS has found the Heritage Private School to be eligible for tax-exempt status as a "school" and not as a religious organization. Further, the petitioner's handbook for parents and students states: "[W]hile this is not an Apostolic Christian school, all of the founding parents are members of the Apostolic Christian Church." The director found that the petitioner is a bona fide, tax-exempt religious organization. This portion of the director's decision shall be withdrawn.

The petitioner has not submitted evidence to comply with either the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B) regarding its tax exempt status as a bona fide nonprofit religious organization. The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). Thus, the petition also must be denied for this reason.

Another issue not addressed by the director that must be discussed 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.

The petition was filed on April 4, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from April 4, 1999 until April 4, 2001. The petitioner indicated on Form I-360, Petition for [REDACTED] Widow, or Special Immigrant, that the beneficiary last entered the United States on June 14, 1997, as a temporary religious worker, and that her current status was to expire on June 13, 2002. Part 4 of the Form I-360 submitted by the petitioner indicates that the beneficiary has never worked in the United States without permission.

On appeal, the petitioner provides a description of the beneficiary's duties and indicates that all of the school subjects, except mathematics, are taught with the application of the religious beliefs of the Apostolic Christian Church. A review of the State-mandated curricula, however, indicates that while the beneficiary may be providing the students with the additional beliefs of the church, the majority of her duties are secular and administrative in nature, typical to that of a teacher in any other state-recognized school.

Counsel states that the requirements to be a teacher for the petitioner include membership in the faith, a "religious conviction to teach," and that the teacher must be "qualified and have teaching experience in parochial or para-church schools."

Although the record does list some duties of the beneficiary, it does not provide a comprehensive description of the beneficiary's activities during the two-year period immediately preceding the filing date of the petition. The petitioner has not provided sufficient evidence to establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. This, in conjunction with the finding that the beneficiary was employed for the last two years by a "school" (as recognized by the IRS), and not by a "religious organization," immediately preceding the filing date of the petition, precludes a favorable finding. Therefore, the petition must also be denied for this reason.

The final issue to be addressed in this proceeding is whether the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition. 8 C.F.R. § 204.5(m)(4) requires that each petition for a religious worker must be accompanied by a qualifying job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state the terms of payment for services or other remuneration. In addition, 8 C.F.R. § 204.5(g)(2) requires 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 stated that the beneficiary will be receiving a remuneration of \$15,500 a year, plus the full cost of her medical insurance and other benefits.

In response to a request for additional evidence, the petitioner's representative stated that the beneficiary would receive an annual salary of \$16,750, plus the full cost of her medical insurance. The petitioner's representative also stated that he was confident of the petitioner's ability to continue to pay the beneficiary the proffered wage, and that the beneficiary's expenses are minimal. The petitioner indicated that most of its income is derived from tuition and donations and that it has never had a shortage of funds during the beneficiary's employment with the petitioner. The petitioner also stated that as of October 31, 2001, it had a net balance of \$22,417 in its general operating fund, and that it owns the school building and the four acres where the school is located.

The petitioner has submitted the beneficiary's 2000 IRS Form W-2, Wage and Tax Statement, indicating that she was paid \$15,192.98 during that year. The petitioner also has provided its unaudited Profit and Loss Statement for the period of April 1, 2001 through November 30, 2001, indicating a net loss of \$2,212.23. A Profit and Loss Statement for the period of July 1, 1999 through June 30, 2000, indicates a net loss of \$2,915.85. A Profit and Loss statement for the period of July 1, 2000 through June 30, 2001, indicates a net income of \$1,912.40. A copy of the petitioner's money market accounts indicates a total value of \$32,692.95 in its building fund, and another \$10,834.37 in its business checking account.

The petitioner has not furnished annual reports, federal tax returns, or audited financial statements. The documents submitted do not satisfy the regulatory requirements of 8 C.F.R. § 204.5 (g) (2). The petitioner has not demonstrated that it has extended a valid job offer to the beneficiary, or established its ability to pay the beneficiary the proffered wage. For these additional reasons, the petition may not be approved.

It also is noted for the record that based on the inability to provide sufficient documentation to fulfill the evidentiary requirements of the permanent resident petition, the beneficiary also does not appear to have been entitled to the R-1 religious worker classification previously granted. In addition, a mere showing that the beneficiary has been in the United States in nonimmigrant R-1 status since July 14, 1997, does not adequately establish that she was continuously working in a qualifying religious vocation for the two-year period immediately preceding the filing date of this petition. Further, the Bureau is not

required to approve applications or petitions where eligibility has not been demonstrated. Each petition must be adjudicated based on the evidence contained in that record. *Sussex Engineering, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988); *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (BIA 1988).

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.