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Citizenship and Immigration Services

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CI

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

[REDACTED]

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: **NOV 19 2003**

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant 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]

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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Seventh-Day Adventist (SDA) church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a Bible instructor. The director determined that the petitioner had not established that the beneficiary's position is a qualifying religious occupation.

On appeal, the petitioner's pastor argues that the beneficiary's occupation qualifies him for the benefit sought.

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, 2008, 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, 2008, 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)(4) state that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The regulations at 8 C.F.R. § 204.5(m)(2) contain the following pertinent definition:

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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Still, it cannot suffice that an alien's job title appears in this list of qualifying occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion.

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. 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).

Pastor Ernie Wright of the petitioning church describes the beneficiary's duties:

[The beneficiary] is being offered the position of a full-time Bible Instructor. His duties will be to conduct Bible classes, to organize prayer groups for the church members, to consolidate new believers, to conduct workshops for parents and children, to conduct sermons when necessary, [and] to assist in the direction of all religious services. [The beneficiary] will also be working with our school by conducting Bible classes from kinder[garten] to 8th grade, he will also have to coordinate vacation Bible School for summer time for the children, [and the beneficiary] will also provide spiritual counseling and religious orientation to our members. He will also assist me in all the religious services.

In a separate letter [REDACTED] asserts that the beneficiary "has had the required two years of training and experience that are necessary to perform as a Bible Instructor according to [the] Immigration and Naturalization Service," having worked for the petitioner since April 1998. [REDACTED] lists the requirements of the position:

To be able to perform as a Bible Instructor, the person needs to have a knowledge of the word of God. It is necessary that the apprehension of the Bible be learned at seminars and courses given by the SDA Church. It is also necessary to be able to handle the pressure that comes with the job, since there are many duties that this job brings. . . .

Any routinely member is not be able [sic] to perform the duties [the beneficiary] is able to do since it is necessary to be studied, trained and dedicated to perform all the above duties.

The petitioner submits copies of the beneficiary's training certificates, showing that the beneficiary completed the Prophecy Seminar on October 31, 1998, the Lay Preachers Institute on September 7, 1999, and the Revelation Seminar on December 12, 2000. Pastor [REDACTED] has indicated that the petitioner has employed the beneficiary as a Bible instructor since April 1998, which was before the beneficiary completed any of these courses. Therefore, the courses cannot be necessary to qualify for employment as a Bible instructor; otherwise, the beneficiary would not have been eligible to work in that position until December 2000.

The petitioner submits a letter from [REDACTED] executive secretary of the Greater New York Conference of Seventh-Day Adventists, stating "[w]e employ ministers, associate ministers, Bible instructors, as well as all our office staff." This letter supports the claim that the employment of Bible instructors is routine within the denomination, but it also lists "office staff" who perform secular functions.

The director instructed the petitioner to submit "the position description for this job taken from . . . church manuals and/or by-laws," as well as "published material . . . that shows which occupations are considered religious occupations within the Church, and what the occupation's mandatory qualifications are."

In response, the petitioner has submitted photocopied extracts from the *Seventh-Day Adventist Church Manual*. Page 120 of the *Manual* includes a paragraph describing the work of Bible instructors, but this excerpt does not indicate what the requirements are to hold this position. The petitioner has also submitted excerpts from another publication, *Responsibilities in the Local Church: Handbook for the Seventh-Day Adventist Church in North America*. A chapter from this book discusses "the ministry of Bible Studies," and refers to the tasks of "the Bible Minister." The chapter includes a section entitled "Training." The beneficiary, however, is not a Bible minister; he is a Bible instructor. The *Handbook* indicates that the main function of a Bible minister is to "work . . . with prospective members" rather than provide lessons to existing

members. Furthermore, the role of Bible minister is plainly not a full-time occupation; the *Handbook* indicates that “[a] committed Bible Minister will set aside a few hours a week for this ministry.” The *Handbook*’s index does not contain the exact term “Bible Instructor,” although it does refer to “Bible Teachers” in both the “Adult Church School” and the “Children’s Church School.” The petitioner has not submitted the relevant excerpts discussing those occupations.

The petitioner has also submitted copies of the beneficiary’s income tax returns, one of which indicates that the beneficiary apparently underreported his income by over \$10,000 in 2000. The beneficiary claimed \$5,238 in income that year, but a Form 1099-MISC issued to him by the petitioner reflects payments totaling \$15,360. Also on the 2000 return, the beneficiary identified himself as a “colporteur,” i.e. seller of religious books, which is not the occupation in which the petitioner claims to have employed the beneficiary since 1998. The beneficiary’s 2001 return also reflects underreported income. The beneficiary claimed \$7,884 in income that year, but the church’s Form 1099-MISC shows \$15,520, nearly twice that amount. Furthermore, in 2000 and 2001, the beneficiary and his spouse filed joint returns, and indicated that the beneficiary’s spouse worked as a home health aide. The total income claimed, therefore, purportedly accounts for the earnings of both the beneficiary and his spouse. The record does not contain sufficient documentation to allow a determination as to whether the petitioner’s claim regarding the beneficiary’s compensation is more accurate than the beneficiary’s own assertions on his tax returns.

The director denied the petition, stating that the petitioner has not provided detailed information regarding the beneficiary’s religious training or to show that the beneficiary’s position typically requires such training. The director also cited case law regarding the submission of contradictory or doubtful evidence. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

On appeal, the petitioner submits a letter from Pastor [REDACTED] who asserts that the beneficiary’s duties are similar to those of a pastoral assistant, which in turn is an occupation defined in the Department of Labor’s *Dictionary of Occupational Titles*. That definition does not include teaching among a pastoral assistant’s duties, whereas the petitioner has indicated that teaching represents a major facet of the beneficiary’s occupation. The only documentation the petitioner has submitted regarding Bible instruction is an official SDA Church document that indicates that a “Bible minister” should “set aside a few hours a week” to conduct Bible study lessons, and a letter indicating that an unspecified number of Bible instructors work in the greater New York area. Pastor [REDACTED]’s new description of the beneficiary’s work, offered on appeal, conforms more closely to the duties of a pastoral assistant, but this change raises further questions of credibility. 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 Service requirements. *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998). See also *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in

which the Immigration and Naturalization Service (now CIS) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The record contains several irregularities which raise serious concerns regarding the consistency and reliability of the information in the record. The petitioner's description of the proposed job duties has changed; the beneficiary's training documents date from months or years after the beneficiary began working in the position for which the training was purportedly necessary; the beneficiary's tax records do not match those of the petitioner; and official SDA Church documents submitted to support the petition are either entirely irrelevant (because they refer to a different function) or else demonstrate that the church regards the beneficiary's work as traditionally a part-time function undertaken during a church member's spare time. Given these discrepancies, we cannot conclude that the petitioner has credibly established that the beneficiary has worked, or will continue to work, in a capacity that the SDA Church traditionally regards as a full-time religious occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.