



U.S. Citizenship
and Immigration
Services

C-1



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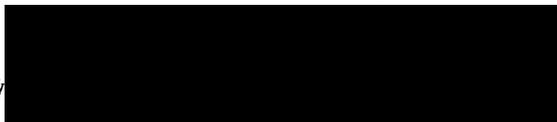
Office: CALIFORNIA SERVICE CENTER

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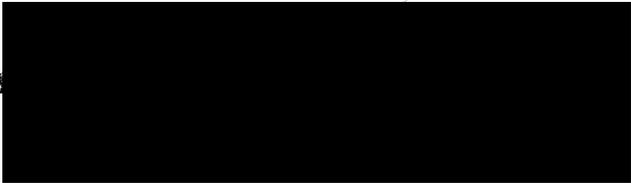
IN RE:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

for

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a school. It seeks to classify 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 professor of general education. The director determined that the petitioner had not established its status as a tax-exempt religious organization.

On appeal, counsel submitted a letter and additional documentation.

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).

The regulation at 8 C.F.R. § 204.5(m)(3)(i) 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 § 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 § 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 § 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, which 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.

With the petition, the petitioner submitted a copy of a January 25, 1979 letter from the IRS, in which the IRS granted the petitioner tax-exempt status under section 501(c)(3) of the IRC as an educational organization under sections 509(a)(1) and 170(b)(1)(A)(ii). The director determined that the petitioner had not established that it qualified as a bona fide religious organization.

On appeal, the petitioner submitted a copy of the January 31, 1992 letter from the IRS to the General Conference of [REDACTED] affirming the organization's group tax exemption under section 170(b)(1)(A)(1). The petitioner does not, however, submit evidence to establish that it falls under the group tax exemption issued to the [REDACTED]. The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under the group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt religious organization. The evidence submitted by the petitioner is insufficient to meet the requirements of the regulation.

Beyond the decision of the director, the petitioner has not established that the proffered position qualifies as that of a religious occupation. This deficiency constitutes an additional ground for dismissal of the appeal.

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. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (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 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.

The petitioner states that the beneficiary teaches math, science, computer and religion. However, the beneficiary's class schedule submitted by the petitioner does not reflect any teaching duties in religion. The petitioner also states that the beneficiary is required to use the Bible as the "basic framework in which all subject matter is presented to the students." The beneficiary's class schedule indicates that he teaches physics, algebra, pre-calculus, and computers. The petitioner submitted no evidence to establish that the courses the beneficiary teaches are religious in nature or relates to the religious creed of the denomination.

The petitioner also has not established that the beneficiary has been continuously employed in a religious occupation for two full years prior to the filing of the visa petition.

The petitioner states that the beneficiary has been in its employ as an instructor since he entered the United States on an R-1 visa in June of 2000. The record contains copies of two W-2s, Wage and Tax Statements, for the year 2001. The petitioner issued one in the amount of approximately \$15,208. The other was issued by the Adventist [REDACTED] in the amount of approximately \$6,824. The record contains no evidence of the relationship of the petitioner to Adventist Health System/West or the nature of the beneficiary's service to that organization. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988). The W-2s indicate that the beneficiary was employed in a capacity other than as an instructor during 2001 and therefore, does not possess the required two years of experience prior to the filing of the visa petition. This deficiency also constitutes a ground for dismissal of the appeal.

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.