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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

C

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date:

JUL 12 2004

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 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

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a Catholic social services provider. 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 coordinator of [REDACTED] and [REDACTED].

The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a coordinator immediately preceding the filing date of the petition. In addition, the director determined that the position offered qualifies as a religious occupation.

On appeal, counsel argues that the director derived the grounds for denial from unacceptable sources.

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)(1) indicates that the "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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate 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. The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a coordinator throughout the two years immediately prior to that date.

co-director of the petitioning entity, states that the beneficiary has worked for the petitioner since 1994, in exchange for housing, food, and a monthly stipend of \$100. The petitioner submits contemporaneous evidence to show that the beneficiary has resided at [REDACTED] for several years.

The director requested additional evidence to show the beneficiary's work history. The petitioner has responded by submitting copies of the beneficiary's monthly stipend checks back to January 1999.

The director, in denying the petition, stated that the petitioner failed to provide evidence of the beneficiary's prior work experience, and provided only "statements of what was initially sent." The director, however, also listed the new materials that the petitioner had submitted in response to the notice.

While the director's conclusion is not clearly worded, it appears that the director determined that the beneficiary's past experience is non-qualifying, because it was not salaried. Counsel, on appeal, argues that there is no specific requirement of a "salary" in the sense of a fixed hourly wage, and that the petitioner did compensate the beneficiary through providing housing, meals, and a nominal monthly stipend. Thus, the beneficiary's work for the petitioner was not unremunerated. Counsel cites *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982), in which the Board of Immigration Appeals determined that a religious worker who received room and board instead of a cash salary was employed, and not an uncompensated volunteer.

The preponderance of the evidence of record supports the finding that the beneficiary continuously worked for the petitioner throughout the two-year qualifying period, consistently receiving compensation in the form of room, board, and a stipend. We hereby withdraw the director's finding to the contrary.

The other issue concerns the nature of the beneficiary's occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines a "religious occupation" as 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 at 8 C.F.R. § 204.5(m)(2) 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. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services 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.

Mark Zwick's initial letter offers the following description of the beneficiary's work:

[The beneficiary] has worked full-time as coordinator of [REDACTED] and has been instrumental in developing the programs offered there, including the two day a week medical clinic staffed by volunteer doctors and nurses, the food pantry, and the clothes distribution program. . . . [The beneficiary] is completely in charge of the work done at [REDACTED]. She recruits and trains volunteers, coordinates the clinic and schedules volunteer doctors, and seeks donations of clinic supplies, etc. She coordinates and directs food and clothing distribution, including the pickup and storage of donations. [REDACTED] serves over 500 persons per month, largely because of [the beneficiary's] efforts.

The director requested further details about the nature of the beneficiary's work at [REDACTED]. In response, [REDACTED] elaborate on the above duties, and assert that "[t]he coordinator witnesses his/her Catholic faith to the clients of [REDACTED]" and "will provide an opportunity for guests of the house to participate in Catholic liturgical events and community prayer." They indicate that the coordinator "is responsible for the physical maintenance of [REDACTED] and "maintains relationships with other social service agencies, churches, clinics, and schools in the area." In her own statement, the beneficiary asserts that [REDACTED] provides English classes, medical services, and food and clothing distribution. Volunteer doctors and nurses provide the medical services. There is no indication that the beneficiary personally teaches the English classes; we note that her own statements in the record are in Spanish. The beneficiary does provide counseling, and she is in charge of logistical considerations that allow [REDACTED] to function.

The director denied the petition, stating that the petitioner has not established that the position requires skills or credentials beyond the competence of volunteers from the congregation. The director also stated that the petitioner has not shown that the leadership of the Catholic church regards the beneficiary's position as a traditional religious function.

On appeal, counsel argues that the director has impermissibly imposed requirements that do not derive from the statute, regulations, or published case law. Counsel observes, correctly, that unpublished appellate decisions have no force as precedent. Counsel also notes that the regulatory list of qualifying religious occupations includes "workers in a religious health care facility," and counsel maintains that the regulations thus take into account occupations which could be undertaken by secular workers, but which in this instance take place at religious facilities, performed by workers whose primary motivation is religious.

Upon careful consideration of the materials presented, it appears reasonable to conclude that the provision of charitable services, such as those provided under the beneficiary's direction at [REDACTED] is a traditional religious function of the Catholic church. While some of the beneficiary's individual duties are mirrored by secular establishments, in this case the beneficiary is acting on behalf of the church, performing a function often associated with the church. The beneficiary is in charge of the [REDACTED] facility, and as such is not merely a rank-and-file volunteer providing services during her free time; this is an endeavor that appears to consume the better part of the beneficiary's waking hours. Also, the petitioner has shown that the beneficiary is not merely a random member of a Catholic congregation, but possesses extensive training and experience in positions comparable to the one she now holds.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.