



U.S. Citizenship
and Immigration
Services

C-1



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 22 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

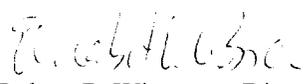
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



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

PROCESSED BY THE
INVESTIGATION OF PERSONAL PRIVACY

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently exercised his discretion to revoke the approval of the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a multid denominational theological seminary. 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 systematic theology. The director determined that the petitioner had not established that (1) it is exempt from taxation as a religious organization; (2) the position offered to the beneficiary constitutes a qualifying religious occupation; or that (3) the beneficiary had the requisite two years of continuous work experience as a professor immediately preceding the filing date of the petition.

Section 205 of the Act, 8 U.S.C. § 1155, provides, in relevant part, that “[t]he Attorney General [now the Secretary, Department of Homeland Security] may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title.”

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 first issue in contention regards the basis for the petitioner’s tax exemption. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the employer qualifies as a non-profit 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 organizations.

According to documentation from the Internal Revenue Service, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches, but rather under section 170(b)(1)(A)(ii) of the Code, which pertains to schools.

It is overly restrictive to assert that only churches, classified under section 170(b)(1)(A)(i) of the Code, can qualify as religious organizations. Other classifications, while not *solely* limited to religious organizations, do not *exclude* such organizations. See Memorandum from ██████████ Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003). We note that the petitioner submitted a copy of this memorandum as part of its response to the notice of intent to revoke.

In this instance, the petitioner has submitted a letter from the Tax Exempt and Government Entities Division of the Internal Revenue Service, dated April 16, 2002, indicating that the petitioner is "a tax-exempt religious organization described in section 501(c)(3) of the Code." Such a letter would appear to rather definitively settle the issue of whether the Internal Revenue Service considers the petitioner to be a "religious organization." The director has cited no countervailing statute, regulation, case law, or documentary evidence to diminish the weight of this letter. Supporting the letter is ample other documentation in the record, which establishes the pervasively religious nature and purpose of the petitioning entity.

The next question is whether the beneficiary's work constitutes a qualifying religious occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers 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.

The petitioner has indicated that the beneficiary "[t]eaches Systematic Theology core sequence at the Master's of Divinity level," and has other duties related to graduate studies, such as directing seminars. As a professor at a seminary, the only purpose of which is to prepare students for the ministry, it is difficult to conclude that the beneficiary is not a "religious instructor," a category specifically included in the definition of "religious occupation."

The director correctly observed that employment by a religious organization is not automatically sufficient to establish that a given occupation qualifies as "religious." The director then found, with little elaboration, that "[t]he beneficiary's proffered position in this case is a secular [one] and is ineligible for consideration as a religious occupation."

It is true that employment by a religious entity does not necessarily mean that one is employed in a religious occupation. In this case, however, the petitioner has not merely claimed employment by a religious organization. If the beneficiary were a professor of, for instance, biology or history, then it would be difficult

to dispute that he works in a secular occupation; but this does not prove that the job of a college professor, regardless of subject matter, is invariably secular in nature. The United States Supreme Court recently held that, in the context of teaching devotional theology to college-level students in preparation for careers in the ministry, “religious instruction is of a different ilk” than instruction in secular subjects. *See Locke v. Davey*, 124 S.Ct. 1307, 540 U.S. ____ (2004).¹ According to this decision, the preparation of students for the ministry is an inherently and unavoidably religious endeavor. We therefore withdraw the director’s finding that the beneficiary is not engaged in a religious occupation.

The final issue raised by the director regards the beneficiary’s past experience. 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 December 5, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a theology instructor throughout the two years immediately prior to that date.

The statute states, at section 101(a)(27)(C)(iii), that an alien seeking classification as a religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. The term “continuously” has been interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). Part-time work is not continuous. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In a letter dated July 23, 2000, and submitted with the petition, [REDACTED] chairman of the board of trustees of [REDACTED] indicates that the beneficiary “has been President and Professor at [REDACTED] since March 8, 1994. . . . [The beneficiary] is also in the faculty of theology at the [REDACTED].” The record contains nothing from the University of Helsinki to corroborate this last claim, or to clarify the extent of the beneficiary’s work there. The beneficiary himself claims to have been a “Docent in Ecumenics” at that university since 2000.

In the notice of intent to revoke, the director stated “the petitioner must establish that the beneficiary has been working continuously since November 23, 1999, in the same capacity as the proffered position, Teacher-Systematic Theology.” The director noted the beneficiary’s duties as president of Iso Kirja College, and asserted that “[t]he petitioner has not provided corroborating evidence to establish that the beneficiary has been engaged continuously as Teacher in Systematic Theology throughout the two-year period immediately preceding the filing date of the petition.”

In response, [REDACTED] dean of the petitioner’s School of Theology, states that the beneficiary “taught systematic theology for at least nine years prior to his employment at Fuller Theological Seminary. He has been an ordained minister since 1989.” This information does not establish the extent to which the beneficiary’s duties as a university president limited his ability to carry on the occupation of an instructor.

¹ We stress that not every individual who provides “religious instruction” qualifies for immigration benefits as a religious worker. We must consider the nature and extent of such instruction on a case-by-case basis. For instance, an individual who is unemployed, or who works in a secular occupation, and who volunteers as a Sunday school teacher at her local parish, is providing instruction relating to religion, but only as an ancillary activity, rather than what could reasonably be called an “occupation.”

We note that, on the Form G-325A Biographic Information sheet that accompanied the beneficiary's application for adjustment of status, the beneficiary listed his occupation from 1994 to 2000 as "President" of [REDACTED] suggesting that the beneficiary himself considers the office of president to have been his principal activity.

The director stated, in the notice of revocation, "[t]he petitioner has not submitted corroborating evidence to show how the beneficiary's work as President at [REDACTED] comparable with the beneficiary's work as Teacher-Systematic Theology." The director also observed that experience *before* the two-year qualifying period cannot compensate for failure to work in the occupation continuously *during* that two-year period.

On appeal, counsel repeats the argument that "the beneficiary has been a minister since July 1, 1989." The beneficiary, however, has not been acting as a minister, but as a college instructor and administrator. As the Board of Immigration Appeals observed in a precedent decision, we must rely on objective guidelines as to what constitutes a "minister"; otherwise, "Congressional policy in the field of immigration could be readily circumvented by accommodating religious organizations." *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978). In this instance, the seminary could conceivably circumvent Congressional policy by hiring ministers who have never taught before, while asserting that they meet the two-year experience requirement because they have been ministers for more than two years. Therefore, the argument that the beneficiary has been a minister since 1989 is not persuasive here.

In a joint letter submitted on appeal, the president and the academic dean of [REDACTED] state that "[i]n his capacity as professor of theology, [the beneficiary] taught a full course load each year." The officials acknowledge that the beneficiary was also "[REDACTED]" but they do not elaborate on the nature or extent of his duties in that latter capacity.

The petitioner has submitted no contemporaneous evidence to establish that the beneficiary worked full-time as a professor [REDACTED] during the 1999-2000 school year, or to show that teaching a full course load is inherently equivalent to full-time employment. There is no explanation to show the beneficiary's duties as president, or the amount of time the beneficiary was required to devote to those duties. It is also not clear that the beneficiary worked "continuously" (in the sense described in *Matter of B, supra*) as an instructor, if he was also undertaking the duties of the top administrative official.

For the above reasons, we concur with the director's finding that the petitioner has not established that the beneficiary worked continuously as an instructor throughout the two-year qualifying period ending December 2001.

Another issue has surfaced upon review of the record, regarding membership in a denomination. 8 C.F.R. § 204.5(m)(1) states, in pertinent part:

[A special immigrant religious worker] 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 . . . working for the organization at the organization's request in a professional capacity in a religious vocation or occupation, or working 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.

Much of the above language derives directly from the statute, such as the requirement at section 101(a)(27)(C)(i) of the Act, 8 U.S.C. § 1101(a)(27)(C)(i), which states that the alien must have “been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States,” “for at least 2 years immediately preceding the time of application for admission” (i.e., the filing of the petition).

A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). In this instance, Congress clearly intended for the two-year denominational membership requirement to have meaningful purpose and effect; indeed, the legislative history specifically cites this requirement as a safeguard to help ensure the integrity of the program. *See* H.R. Rpt. 101-723, at 75 (Sept. 19, 1990). Therefore, we cannot ignore the denominational membership requirement, or arbitrarily determine that it does not apply in proceedings that involve interdenominational, nondenominational, or multid denominational employers.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following relevant definitions:

Religious denomination means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an interdenominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The employing entity must be “affiliated with the religious denomination” to which the beneficiary belongs, and the alien’s employment must be “at the request of the organization,” i.e., at the request of that denomination (hence the reference to “a religious denomination which has a bona fide nonprofit religious organization in the United States”). The beneficiary must also have been a member of the petitioner’s denomination throughout the two-year period preceding the filing of the petition.

The petitioning seminary is not affiliated with any one denomination. If we consider the petitioner to be an interdenominational religious organization, and thus a denomination unto itself pursuant to 8 C.F.R. § 204.5(m)(2), then the plain wording of the statute and regulations demands that the petitioner establish that the beneficiary has been associated with the petitioning “denomination” throughout the entire two-year qualifying period.

The beneficiary’s 1989 ordination was under the authority of the [REDACTED] Counsel has asserted that [REDACTED] is “the theological training center for [REDACTED]. The beneficiary’s work in Finland, therefore, has been in relation to, and on behalf of, the [REDACTED] of Finland. The petitioning seminary, which calls itself “multidenominational,” welcomes students and faculty from Pentecostal denominations, but also from many other denominations ranging from Roman Catholicism to Messianic Judaism.

The two-year qualifying period began in December 1999; the beneficiary did not begin working for the petitioner until September 2000. Because there is no evidence of any kind of formal affiliation between the petitioner and [REDACTED] or between the petitioner and the Finnish Pentecostal denomination, the evidence of record, on its face, does not permit the conclusion that the beneficiary has been a member of the petitioner's denomination throughout the entire two-year qualifying period. To overlook this information would be to nullify the purpose and meaningful effect of the statutory denominational membership requirement.

The petitioner has overcome some, but not all, of the director's stated grounds for revocation. We therefore affirm that the petition was not approvable at the time of filing, should not have been approved, and that the director properly exercised his discretion under section 205 of the Act to revoke approval of the petition. We note that the above issues regarding experience and denominational membership, both during the two-year qualifying period, apply to the present petition, filed in December 2001. These flaws in this petition can be attributed to premature filing rather than any intractable issues of ineligibility inherent in the beneficiary's work or the petitioner's job offer. Assuming there have been no interruptions or significant changes in the beneficiary's duties, the beneficiary has now been working for the petitioner for nearly four years. The beneficiary's work in Finland, and denominational membership, are impediments only in relation to petitions filed before September 2002.

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.