



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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

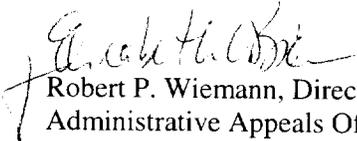
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[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 Director, California Service Center, initially approved the employment-based immigrant visa petition. Subsequently, upon further review of the record, the director determined that the petition should not have been approved. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and his reasons therefore, and ultimately exercised his discretion to revoke the approval of the petition on November 21, 2003. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petition was approved on June 14, 2003. Several months later, on August 25, 2003, the director informed the petitioner that additional information was necessary and that failure to submit that information "may result in the denial of your application" to adjust status. The petitioner submitted a substantive response to this notice, which apparently was originally misfiled but was eventually incorporated into the record.

The director later issued a notice of intent to revoke on September 23, 2003. This notice cited the same grounds as the August 25, 2003 request for evidence discussed above, and indicated that the petitioner had failed to respond to the request for evidence. While this latter statement was erroneous, the director later acknowledged receipt of the petitioner's response to the request for evidence. Because both notices raised essentially the same questions, and the director, at the time of the revocation, had reviewed the beneficiary's response to the earlier notice, we find that the record shows procedural irregularities, but that these irregularities are not prejudicial or fatal to the outcome of the decision. To remand the matter for the issuance of a new notice of intent to revoke, when the petitioner is already aware of the grounds for revocation, would serve no useful purpose at this stage. The director notified the petitioner of deficiencies, the petitioner responded, and the director found that this response was insufficient.

Section 205 of the Immigration and Nationality Act (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."

The petitioner is a private junior and senior high 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, 8 U.S.C. § 1153(b)(4), to perform services as a French teacher. The director determined that the petitioner had not established (1) that it qualifies as a tax-exempt religious organization, or (2) that the work of a French teacher is considered a religious occupation.

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 under discussion concerns 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 organization 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. The director revoked the approval of the petition in part because the director determined that the petitioner is tax exempt as an educational institution rather than a religious organization.

On appeal, counsel notes the existence of a memorandum that specifies that an entity need not be classified under section 170(b)(1)(A)(i) of the Code in order to qualify as a tax-exempt religious organization. *See Memorandum from William R. Yates, 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), hereafter "Yates Memorandum."

The Yates Memorandum states, in pertinent part:

Qualifying as a religious organization "church" under section 170(b)(1)(A)(i) of the IRC [Internal Revenue Code] is only one method of determining if the petitioner is a qualifying organization. Other organizations classified under section 170(b)(1)(A) of the IRC may qualify if it can be established that this classification is due to religious factors and that they are organized for religious purposes and operate under the principles of a particular faith, rather than solely for educational, charitable, scientific and other 501(c)(3) qualifying purposes.

In instances where the exemption letter from the Internal Revenue Service does not clearly indicate the basis for the exemption, the Yates Memorandum requires the following documentation to establish "the religious nature and purpose of the organization":

(1) A properly completed IRS Form 1023;

- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The petitioner's appellate submission includes a copy of the Yates Memorandum, demonstrating that the petitioner and counsel are, or reasonably should be, aware of its contents, including the above list (which the Yates Memorandum calls the "minimum" necessary evidence). The appellate submission does not, however, include all of the above documentation (for example, the Form 1023 is absent). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Without the Form 1023, we must turn to other sources to determine how the petitioner has represented itself to the Internal Revenue Service. In this regard, we note that the petitioner is required to file Form 990, Return of Organization Exempt from Income Tax. The petitioner has submitted copies of this return for fiscal years 1999 and 2000, the most recent years for which returns were then available. A notation on the form reads:

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

Part III of this form, "Statement of Program Service Accomplishments," asks "What is the organization's primary exempt purpose?" followed by a line for the response. The petitioner has left this line blank. Beneath this line, the form indicates "All organizations must describe their exempt purpose achievements in a clear and concise manner." Although the form provides space for four "program service accomplishments," the petitioner lists only one: "junior and senior high school – general education" and the number of students (which varied slightly on the 1999 and 2000 returns). In Part VIII of both years' forms, the petitioner refers to "education" and its "educational purpose." There is no mention of religious purpose here, or anywhere else on the form. This evidence is consistent with the director's finding that the petitioner's tax exemption derives primarily from the petitioner's educational purpose, rather than its religious character.

Somewhat related to the issue of tax exemption is the denominational requirement. 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 . . . 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.

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

Bona fide nonprofit religious organization in the United States means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status

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”).

Steve Truesdell, principal of the petitioning school, states “teachers in our school are required to belong to our same religious denomination,” but he does not identify what that denomination is. (Indeed, in later correspondence, he refers to the petitioning entity as “non-denominational.”) He asserts that the beneficiary is a member of “both the Hope Chapel and . . . the Westgate Church communities,” and that “[t]he Statement[s] of Faith of Hope Chapel, Westgate Church, and [the petitioner] are congruent.” Similarity of doctrine does not establish any formal affiliation between the petitioner and the unspecified denomination to which Hope Chapel and Westgate Church belong (if, in fact, both churches belong to the same denomination). There is no evidence that the petitioner’s job offer to the beneficiary is “at the request of the organization” of “a religious denomination.”

Randy Boldt, pastor of Hope Chapel Foursquare Church, Saratoga, California, states that the beneficiary is “a member of the church.” The letter lists the church’s web site as <http://hopechapelsiliconvalley.com>, which indicates “Hope Chapel is affiliated with the International Church of the Foursquare Gospel, a network of Christian churches and ministries.” The International Church of the Foursquare Gospel operates Christian schools, but an online list of those schools¹ does not include the petitioning entity. The petitioner’s documentation does not even mention the International Church of the Foursquare Gospel, much less claim any affiliation with it. Similarly, Randy Boldt’s letter contains no mention of the petitioner.

Steve Clifford, senior pastor of WestGate Community Bible Church, states that the beneficiary has been “a faithful attendee . . . in good standing with the church” since August 2000, but he does not specifically call the beneficiary a member of the church. Attendance at a church is not necessarily the same thing as membership in that church, and the letter does not call the beneficiary a member of the church. The church’s letterhead lists a web site, <http://www.westgatechurch.org>. The petitioner submits printouts from that website, as well as from the similarly- but not identically-named <http://www.westgate-church.org>. The printouts from the non-hyphenated site do not identify any denominational affiliation. The hyphenated site refers to the Evangelical Free Church of America. That site, however, does not belong to WestGate Community Bible Church in San Jose, California, but rather Westgate Church in Weston, Massachusetts. Therefore, the printouts from <http://www.westgate-church.org> are of no value in this proceeding. Given that the site’s home page clearly states that the church is in Massachusetts, it is not entirely clear why the petitioner submitted these printouts in the first place. The fact that the petitioner confused WestGate Community Bible Church in California with

¹ <http://www.foursquare.org/redirect.cfm?http://ce.foursquare.org/schools/search.cfm?s=true&v=all&type=institute>

Westgate Church in Massachusetts does not lead us to believe that the petitioner has significant ties to either church. Even if the petitioner had demonstrated that the above churches share the same basic doctrines as the petitioning school, this would be necessary, but not sufficient, to establish that the entities belong to the same denomination.

While WestGate Community Bible Church does not discuss its denominational affiliation on its web site, we note that the church is listed in an online directory of Baptist churches in San Jose.² In the absence of any other evidence to the contrary, it appears that this church belongs to a Baptist denomination.

From the available evidence, we conclude that the International Church of the Foursquare Gospel is a religious denomination, and that the beneficiary is a member of that denomination by virtue of being a member of the Hope Chapel Foursquare Church. Absent any evidence that the admittedly “non-denominational” petitioner is affiliated with the International Church of the Foursquare Gospel, we cannot conclude that the beneficiary is, in fact, a member of the same denomination in which she seeks employment, as required by the regulations. The petitioner has not shown that the beneficiary’s proposed employment is at the request of the religious denomination to which she belongs, as required by section 101(a)(27)(C)(ii) of the Act and its relevant subsections.

The remaining issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines “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. As noted above, the petitioner claims to be “non-denominational.”

The beneficiary originally entered the United States to teach elementary school French at a public school in Louisiana. The petitioner has offered the beneficiary a position as a French teacher. If there is no meaningful or significant distinction between the beneficiary’s work at a secular public school and the petitioning

² <http://www.thecityofsanjose.com/church/church-baptist.html>

religious private school, then there is no reasonable basis to determine that the beneficiary's work is a traditional religious function rather than a pervasively secular activity.

The petitioner seeks to continue to employ the beneficiary as a French teacher. There is no indication that she teaches any other subject. The director requested evidence to show that teaching French amounts to a religious occupation or traditional religious function. In response, [REDACTED] has stated "[o]ur teachers' responsibilities include loving, encouraging and counseling our students as needed. These duties are just as important, even more so, than the actual teaching of a specific subject in the classroom." Secular teachers, however, are also called on to provide guidance and serve as role models to their students. The beneficiary's actual, defined duties, such as preparation of lesson plans, appear to be largely indistinguishable from the principal duties of teachers at non-religious institutions.

In revoking the approval of the petition, the director concluded "the petitioner has not established that the duties of the beneficiary's prospective occupation relate to a traditional religious function." The regulatory definition at 8 C.F.R. § 204.5(m)(2) clearly states that some occupations do not qualify as religious occupations, notwithstanding the religious character of the employer.

Counsel argues that the petitioner has documented that the beneficiary's work relates to a traditional religious function. Counsel does not elaborate, stating only that the petitioner "provided this documentation in the form of a detailed letter from [REDACTED] previously submitted in response to the request for evidence. This letter, already discussed above, does not establish that the beneficiary's work as a French teacher pertains to a traditional religious function. [REDACTED] describes the usual duties of a French teacher, and adds very general language about the religious character of the school. The director considered the petitioner's response to the request for evidence, including [REDACTED] letter, and found it to be inadequate to overcome the grounds for revocation. Simply asserting, on appeal, that the letter does in fact overcome those grounds is not a strong rebuttal of the director's finding. Counsel also offers general observations, such as the assertion that the beneficiary is a qualified teacher, but these observations are either off-point or unsubstantiated. Counsel asserts here that the beneficiary "has been a member of the religious denomination for at least 2 years prior to the filing of the I360 petition," but as discussed above, the petitioner has drawn no credible connection between the beneficiary's denominational membership and her employment.

The director has properly exercised his discretion to revoke approval of the immigrant petition in this case.

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.