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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
WAC 03 235 53881

Office: CALIFORNIA SERVICE CENTER

Date: AUG 12 2005

IN RE: Petitioner:
Beneficiary:



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

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a 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 Sunday school director. The director determined that the petitioner had not established that the petitioner's religious denomination considers the position of Sunday school director to be a religious occupation, relating to a traditional religious function.

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 Revenue 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 sole issue raised in the director's decision concerns the nature of the position offered to the beneficiary. 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 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. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

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 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.

John Sarega, secretary of the petitioning church, lists the beneficiary's duties:

- Planning, organizing and directing the religious educational programs for our congregation to promote religious education. . . .
- Prepares the curriculum for the various groups of students (children and adults separately) and directs the selection and use of the curriculum materials. . . .
- He directs the activity leader to plan class fellowship activities. . . .
- Leads weekly prayer groups
- Directs the Bible Studies program held on Wednesdays
- Attends elders' meetings
- Engages in spiritual and religious counseling
- Directs and prepares evangelical outreach programs
- Visits the home of the class officers/teachers and/or class members to resolve specific needs and provide spiritual guidance

The director, in denying the petition, stated: "The petitioner has not established that the instant position of Sunday School Director constitutes a qualifying religious occupation. The petitioner failed to provide verification from an authorized official of the denomination that permanent salaried employment in such an occupation is a traditional function within the denomination." Counsel, on appeal, argues that the beneficiary's activities are inherently and closely tied to the religious activities of the church, and that, therefore, the director cannot reasonably conclude that the beneficiary's work is not religious in nature.

The regulation at 8 C.F.R. § 204.5(m)(2) specifically includes "religious instructor" as an example of a qualifying religious occupation. If the petitioner does, indeed, employ the beneficiary on a paid, full-time basis, and the bulk of the beneficiary's duties involve religious instruction as described, then the beneficiary's position would appear to qualify as a religious occupation. We withdraw the director's finding.

We cannot, however, approve the petition based on the record as it now stands. Review of the record reveals serious discrepancies that call into question the credibility of the petitioner's claims.

8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to establish that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious work. This petition was filed on August 14, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a Sunday school director throughout the two years immediately prior to that date.

In an effort to establish this employment history, the petitioner submitted photocopies of checks drawn from the petitioner's account, payable to the beneficiary. The photocopied checks from the petitioner are not canceled, so there is no evidence that the checks were cashed. The checks show the following numbers and dates:

2081	6/15/03	2110	7/15/03	2137	8/15/03
2095	6/30/03	2122	7/30/03	2171	8/30/03

The petitioner also submits copies of bank statements covering the period between February 8, 2002 and August 11, 2003, with some gaps. The most recent of these statements indicates that, between July 22 and August 7, checks numbered 2045 through 2054 were presented for payment. This does not appear to be consistent with the June 15 date on check number [REDACTED]

Also, the bank statements show that the petitioner's bank cashed between seven and 17 checks per month. The beneficiary's checks were supposedly issued roughly every 15 days. The numbers on beneficiary's checks, however, are separated by gaps of 11 to 33 intervening numbers, rather than the three to nine that would be expected. Between check 2081 on June 15, and check 2171 on August 30, the petitioner alleges to have issued some 91 checks in the span of eleven weeks; the bank statements show that the petitioner took over seven months to go through the sequence of 91 checks from number 1954 (cashed December 31, 2002) to number 2054 (cashed August 7, 2003). Because of these anomalies, the photocopied checks are not consistent with the information contained in the petitioner's bank statements. The available evidence supports the conclusion that the petitioner selected new checks at arbitrary intervals to suggest the passage of time, and backdated them to dates within the qualifying period. The record proves that the checks were not cashed prior to the filing date, and there is no evidence that the checks were ever cashed at all. The conclusion most consonant with the evidence, therefore, is that the checks were fabricated after the fact, to create a false record of payments allegedly made during the summer of 2003.

Given the many anomalies in the purported pay stubs and paychecks, we cannot find that these documents are credible evidence of past payments to the beneficiary, or of the beneficiary's past employment. 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. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). The discrepancies in the above documents raise very grave questions of credibility which, necessarily, color every other claim the petitioner makes that is not supported by credible, verifiable documentation. Among the issues touched by this credibility issue is the petitioner's claim that a congregation of 100 people, including 36 children, requires the services of a staff of several Sunday school teachers under the coordination of a full-time director. (We note that the question of whether the petitioner realistically *requires* a full-time Sunday school director is a separate issue from whether that position constitutes a religious occupation.)

The director must issue a new decision, taking into account the credibility issues listed above. The director is at liberty to allow the petitioner an opportunity to rebut these issues with credible, objective evidence, but we note that these issues arise entirely from evidence provided by the petitioner, rather than from any investigation or evidence outside the record of proceeding. Therefore, the provisions of 8 C.F.R. § 103.2(b)(16)(i), which require advance notice of derogatory evidence *of which the petitioner is unaware*, do not apply in this instance. The petitioner cannot reasonably claim to be unaware of its own submissions.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.