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U.S. Citizenship  
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Services

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FILE:

WAC 03 110 52882

Office: CALIFORNIA SERVICE CENTER

Date: JUN 17 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*

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a subordinate church of the International Church of the Foursquare Gospel. 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 director of community development programs. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a director of community development programs immediately preceding the filing date of the petition. In addition, the director determined that the position does not appear to constitute a qualifying 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 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 first issue we shall consider 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.

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.

petitioner's director of personnel development, describes the beneficiary's work:

Some of the Church's ministry programs fall under the category of the church's community service. This group of ministry programs is led and overseen by [the beneficiary] in his position as director of the church's community development programs. The goal of each of these programs is the church's (and Christianity's) impact upon the needy in the community around the church. The church is seeking to provide assistance as well as Christian Evangelism in the area of the city in which the church is located with the goal of transforming the community for the better.

[The beneficiary] heads or oversees the church's homeless ministry, The Vision House (an after school tutoring and mentoring program for youths), an Adopt-A-Block community evangelism program, and other social welfare programs. [The beneficiary] also conducts voter education seminars to inform and empower voters in the community. . . .

If he is not doing ministry teaching during a typical work day he will spend each day communicating by telephone or e-mail with church members and leaders, community leaders and others, concerning the community ministries of [the petitioning church]. He will spend approximately 30 hours per week in these duties. He will spend an additional 10-20 hours per week in such activities as grant writing and research, planning events, and meeting with church donors concerning ministry programs and ministry support. He has a regular weekly commitment of Bible teaching, which includes Bible study preparation of 5-10 hours per week.

The director requested additional information about the position offered, such as "how the duties of the position relate to a traditional religious function. [redacted] states that the beneficiary's "duties are related directly to the traditional religious function of charity to the poor and needy. He is directly involved in this religious activity, religious instruction and providing after school education to at-risk juveniles, providing food and financial assistance to needy senior citizens, expectant mothers, and destitute mothers on behalf of the church. [redacted] asserts that the beneficiary's year of Bible college and his past experience qualify him for the position offered.

The director, in denying the position, concluded that the petitioner had failed to show that the beneficiary's position qualifies as a religious occupation. On appeal, the petitioner submits two versions of a letter, both dated February 3, 2004, describing the beneficiary's schedule at length. Counsel states that one letter (submitted as an original) is simply a re-signed copy of the other version (submitted as a photocopy), but there are textual differences between the two letters. The photocopied letter bears only the signature of [redacted] original letter is signed [redacted] in very different handwriting, apparently indicating that [redacted] signed the letter on [redacted] full name and title are not evident from the record. Several of the beneficiary's described duties (such as Tuesday afternoon counseling sessions and Friday evening pulpit ministry) appear in one version of the letter but not in the other. Neither the petitioner nor counsel explains these material changes.

Both versions of the letter indicate that the beneficiary leads home church meetings and ministry meetings; coordinates social outreach and food distribution programs; and offers counseling sessions. The letter indicates "this is work . . . that can only be done by full time ministry staff, can only be done by trained and experienced church ministry workers, and it is work that has significant religious importance. . . . These are duties performed beyond those expected of a lay member of the church." The letter also indicates "the

church's religious workers . . . must go through an application process, must provide proof of their character, theological understanding, and long term membership in the Christian faith to be accepted."

The letter also, however, lists duties of uncertain religious significance, such as "off campus breakfast meetings with pastors, business and community leaders"; "office administration"; and an "after-school tutoring and mentoring program." Also included on the beneficiary's schedule is attendance at worship services. If the beneficiary does not actively participate in these services (and there is no claim that he does), then his role during these services is essentially that of a member of the congregation rather than a religious worker.

Upon consideration, while some elements of the beneficiary's work are inherently religious in nature, the available materials do not persuasively demonstrate that the beneficiary's duties are preponderantly related to traditional religious functions.

Having discussed the issue of whether the beneficiary's position amounts to a religious occupation, we now turn to the issue of whether the beneficiary performed the duties of that position continuously throughout the statutory qualifying period. 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on February 21, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the position throughout the two years immediately prior to that date.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for all, or some, of the preceding two years.

that the beneficiary's "position . . . is a full time position," and she states:

[The beneficiary] has been in his present job position since February 2002. Prior to that [the beneficiary], for the two previous years, worked as the director of another of this church's ministry programs. The Christian Coalition is one of [the petitioner's] recognized ministries. . . . When the ministry of the Christian Coalition ended in 2001, [the beneficiary] continued his services as a member of this church's ministry staff in his present position.

The above statement seems to indicate a gap between the end of the Christian Coalition ministry in 2001, and the beneficiary's assumption of his present position in February 2002. This gap was at least a month long, assuming that the Christian Coalition ministry ended December 31, 2001 and the beneficiary began his current job on February 1, 2002; the actual duration of the gap appears to have been substantially longer, given the absence of any documentation showing that the Christian Coalition paid the beneficiary in 2001 for work performed in 2001.

The petitioner submits copies of tax forms (1099-MISC Miscellaneous Income and W-2 Wage and Tax Statements) reflecting the following payments to the beneficiary:

Christian Coalition of California	1998	1099-MISC	\$28,333.44
	1999	1099-MISC	6,275.35
	2000	1099-MISC	5,218.67
The petitioning church	2001	1099-MISC	7,000.00
	2002	W-2	38,716.57

The director instructed the petitioner to submit additional evidence to show the beneficiary's employment history during the qualifying period. In response, [REDACTED]

When the ministry of The Christian Coalition ended in 2001, [the beneficiary] continued his services as a member of this church's ministry staff in his present position. . . .

From March 2001 through February 2002, while [the beneficiary] was serving as a religious worker, he was provided with free housing by a member of [the petitioning church]. . . . This benefit helped [the beneficiary] and his family to remain working with the organization, even while his income was lower. In addition, during 2001, The Christian Coalition reimbursed [the beneficiary] for ministry expenses he had incurred during the year 2000. . . . This large reimbursement . . . helped [the beneficiary] support his family during the year 2001.

The above assertion still does not clarify what the beneficiary was doing between March 2001 and February 2002. [REDACTED] had previously asserted that the beneficiary "has been in his present job position since February 2002," which indicates that the beneficiary was in a different position prior to February 2002.

The director denied the petition, stating that the beneficiary's documented compensation from 2001 is not sufficient to establish continuous employment. On appeal, the petitioner and counsel repeat the previous claim that the beneficiary's low compensation in 2001 does not include belated "reimbursement" from the Christian Coalition of California, for unspecified expenses that the beneficiary had incurred while working for that entity in 2000. Significantly, the record contains no documentation from the Christian Coalition itself, to confirm the fact or amount of this claimed reimbursement. While that entity provided the beneficiary with Forms 1099-MISC in several preceding years, the record contains no such documentation from 2001. Therefore, the record offers no support for counsel's assertion that the petitioner "submitted proof" of this "large expense reimbursement."

The Christian Coalition is generally better known for its social, and especially political, activism than for its involvement in religious activities *per se*. The beneficiary's past activity in the Christian Coalition, and his subsequent regular meetings with community leaders, suggest that much of the beneficiary's work has a political aspect that falls outside the ken of traditional religious functions. Propagation of certain religious doctrines *within the faith* may be a traditional religious function, as may evangelistic efforts to encourage conversion, but the petitioner has not shown that the same applies to efforts to alter the political landscape. Indeed, the tax code limits the amount of political activity that any 501(c)(3) nonprofit organization may undertake. We stress that the beneficiary's work with the Christian Coalition is by no means the foundation of our conclusion that the beneficiary's work does not, by and large, constitute a religious occupation; but it is consistent with that conclusion. (The petitioner asserts on appeal that the beneficiary's work with the Christian Coalition was "similar to the position in which he presently serves with the Church," but the record

contains nothing from the Christian Coalition itself, attesting to the nature of the beneficiary's duties while with that organization.)

The petitioner asserts that the beneficiary's low annual income in 2001 "was reflective of the financial difficulties of the ministry that he was serving. However, [the beneficiary] received sufficient financial support in the form of free housing from a church member." The petitioner has provided the address of the house, but no corroborative or clarifying statement from the unidentified owner of the house. The petitioner does not explain the nature of the "financial difficulties" which are said to have prevented the petitioner from paying the beneficiary more than \$7,000 in 2001. A balance sheet, dated September 30, 2001, indicates that the petitioner's current assets fluctuated between \$1.5 million and \$2 million during the first nine months of that year; its current liabilities during any given month of the same period were generally less than one-tenth of the current assets. The petitioner's explanation for the beneficiary's low compensation is, therefore, not only unsubstantiated, but also inconsistent with the available documentation.

The petitioner, on appeal, once again fails to describe the beneficiary's work in 2001 and early 2002. The petitioner has repeatedly described the beneficiary's work during this period only as a "ministry," a general term not to be confused with the vocation of an ordained minister. The petitioner has also specified that the beneficiary's work in 2001 and 2002 was in "another of this church's ministry programs," indicating that the beneficiary has not continuously performed the duties that he seeks to perform in the future.

For the reasons stated above, we affirm the director's decision to deny the special immigrant visa petition.

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.