

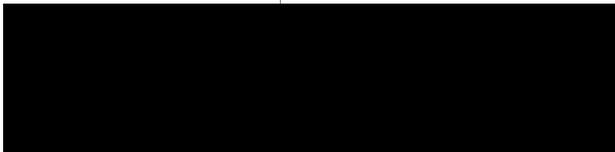
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 04 2005
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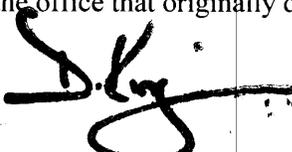
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an religious instructor. The director determined that the petitioner had not established that the position qualifies as a religious occupation, or that the beneficiary had the requisite two years of continuous work experience in a qualifying religious occupation. The director further determined the petitioner failed to establish its ability to pay the beneficiary or that the beneficiary would not be solely dependent on supplemental employment or solicitation of funds for support.

The petitioner, through counsel, submits a timely appeal.

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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two-year period 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 regulation 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) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United

States which (as applicable to the particular alien) establishes:

- (A) 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 August 14, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a religious instructor for the two years immediately prior to that date; the period covering August 14, 2001 through August 14, 2003. The Form I-360 reflects that the beneficiary entered the United States on September 14, 2000. The record further reflects that the beneficiary was authorized to remain in the United States as an R-1 nonimmigrant from June 26, 2001 through February 20, 2003. Thus, for the entire two-year period in question, the beneficiary was in the United States.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who, in accordance with their vocation, live in a clearly unsalaried environment; the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

As it relates to the beneficiary's work during the relevant two-year period, in the letter submitted concurrent with the initial filing, Pastor [REDACTED] of the petitioning church, states that "since June 2001 [the beneficiary has been] employed as our [r]eligious [i]nstructor." Pastor Tiplea further states that the beneficiary works 40 hours per work and that her hours are: "Tuesdays, Fridays and Sundays from 8:00 a.m. to 4:30 p.m.; Wednesdays and Saturdays from 8:00 a.m. to 12:00 noon, and from 5:00 p.m. to 9:00 p.m."

The petitioner submits copies of paychecks issued to the beneficiary and copies of the beneficiary's 2001 and 2002 Form W-2 Wage and Tax Statements. The paychecks cover the period from August 2001 through July 2003 and reflect the beneficiary was compensated in the amount of \$1500. The W-2 forms reflect that in 2001 and 2002 the petitioner compensated the beneficiary in the amount of \$7,500 and \$18,000, respectively.

In his decision, the director noted that the beneficiary had undertaken work in addition to that performed on behalf of the petitioner and determined that the beneficiary could not, therefore, be employed on a "full time basis, in the same capacity as the proffered position and at the same time take several part-time, secular, and intermittent employment."

On appeal, counsel acknowledges that the beneficiary was engaged in part-time work outside of her employment with the petitioner but states that such work "does not negate the fact that she worked at the church full time." Counsel further argues that the beneficiary's "work schedule at the church clearly permitted her to work part-time and intermittently" and that the beneficiary's "work outside the church was of short-duration."

To support her argument counsel refers to the schedule previously provided by Pastor [REDACTED] which details the beneficiary's specific work days and hours and submits letters from [REDACTED] and [REDACTED] to document the work performed by the beneficiary outside of her work for the petitioner. The letters indicate that the beneficiary "offered to assist [them] on various occasions," and that she "drove [them] to the market or went to the market to purchase for [them and] helped [them with] anything [they] needed . . ."

We agree with counsel and find the record does not support the director's determination that the beneficiary's outside employment was inconsistent with full-time employment with the petitioner. As evidenced by the letters submitted on appeal, the beneficiary's part-time work appears to be such that it could have been performed "intermittently." The fact that the beneficiary received nominal amounts for her part-time work, totaling \$2724.25 in 2001 and \$9359.86, further reflects the part-time and "intermittent" nature of the beneficiary's outside employment. These facts, combined with the fact that the petitioner has fully documented its consistent \$1500 compensation of the beneficiary beginning in August 2000, establish the beneficiary's full time employment during the requisite period.

The next 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.

In the original filing, Pastor Tiplea states that the petitioner “wishes to offer [the beneficiary] a full-time permanent position as its Religious Instructor.”

Though the petitioner identifies the beneficiary’s job title with that found in the regulation as a qualifying occupation, it is important to consider the actual duties of the position. A religious organization cannot secure benefits for an ineligible alien simply by referring to the alien’s position with a title such as “Religious Instructor.” In short, the beneficiary’s job *duties*, rather than her title, will determine her eligibility. To hold otherwise would permit religious organizations to sidestep immigration law simply by giving qualifying job titles to all their employees.

Pastor Tiplea describes the position:

[The beneficiary’s] duties will include the planning, organizing and directing the religious educational, social, and recreational programs for female church congregation members to promote religious education. In addition, she will counsel members concerning personal problems, and visit church members at home, in the hospital or convalescent facilities to offer spiritual guidance and assistance.

On August 31, 2003 the director requested further evidence of the petitioner’s “specific job duties” and “remuneration.” In response, the petitioner submitted a more detailed version of the beneficiary’s job description. Pastor [REDACTED] states:

The following are her specific job duties as a Religious Instructor at our church:

- Plans and organizes religious educational, social and recreational programs for female church congregation members to promote religious education. She leads direction of the Bible Studies program through annual, monthly and weekly planning. She plans the work of the program, including preparation to provide life-changing Bible teaching, win persons to Christ, and develop mature Christians. She holds meetings with church leaders on a weekly basis to evaluate the work, determine needs and priorities, and ask God for a direction for the work. She attends elders’ meetings.
- Prepares study materials for the Bible Studies program. She studies religious books and materials. She translates the religious materials into Romanian, as needed. She adapts the contents of the materials, as needed, to meet the needs of different groups.

- Leads weekly prayer groups and directs group Bible studies.
- Directs and coordinates special religious programs and events.
- Counsels members concerning personal problems. She visits church members at home, in the hospital or convalescent facilities to offer spiritual guidance and assistance. She reaches out to members, teaching and developing them to become effective witnesses to Christ. She takes a personal interest in the members, knowing their spiritual maturity and capabilities, and supports their spiritual growth.
- Attends religious seminars and distributes the information to church members.

Pastor Tiplea also states the beneficiary's position relates to a traditional religious function:

The duties of the position relate to a traditional religious function in that the Religious Instructor is in charge of ensuring quality religious education and the spiritual growth of our members. More specifically, we view the Religious Instructor as a quasi-minister in that she is chosen by the pastor and confirmed by the congregation's vote. We view this position not as a mundane job, but rather as a spiritual calling. The Religious Instructor is responsible for educating the current and future members of our church and for instilling the proper spiritual values and worldview.

The Religious Instructor complements and enhances the religious education of our members by providing more in-depth spiritual guidance, systematically exposing the Word through teaching in a classroom setting. In addition, the Religious Instructor sometimes is better equipped to deal with our female congregants' personal spiritual issues.

Finally, Pastor Tiplea submitted a copy of the beneficiary's transcript which reflects the beneficiary's completion of eight courses at Luther Rice Bible Institute and indicates that the minimum education, training and experience necessary to perform the beneficiary's job consists of "two years of religious education/studies."

The director denied the petition, stating "the mere fact that an individual is a member of a religious denomination working in a facility run by that religious denomination does not establish that the job relates to a traditional religious function." The director also determined that the duties of the beneficiary's religious occupation "do not have a religious significance" or "embody the tenets of that particular religious denomination." The director also questioned the validity of the beneficiary's school transcripts and found it unclear "how the [beneficiary's] two years of religious education/studies qualifies the beneficiary for the prospective occupation."

On appeal, counsel states that the petitioner has satisfactorily established the religious nature of the beneficiary's position. Counsel first asserts that the director's conclusions related to the beneficiary's qualifications were incorrect. Counsel states:

[T]he petitioner submitted a copy of [the beneficiary's] diploma which was issued on September 7, 1996 and had the seal of the school on it. The diploma was awarded after the completion of the listed courses. There was no degree conferred on the beneficiary,

and the petitioner never claimed that a degree was conferred or required to perform the job duties of the Religious Instructor. The only requirement was two years of religious education or studies.

As it relates to the beneficiary's training and experience, we note that though the beneficiary must be qualified in her occupation, the regulation requires no specific religious training or theological education. We find that the beneficiary's diploma and transcripts sufficiently demonstrate that the beneficiary possesses the qualifications noted by the petitioner as being required for the position.

However, the record continues to lack evidence that the petitioner's denomination regards the duties of a religious instructor as a traditional religious function, with such instructors being routinely employed full-time at the denomination's churches. First, there is no evidence to show that any person has ever been employed in this position prior to the beneficiary's hiring. That the petitioner was able to operate as a church prior to the beneficiary's employment is evidence that the beneficiary's position is not traditionally a permanent, full-time salaried occupation within the petitioner's denomination. Further, though it is clear that the beneficiary has been employed for two years with the petitioner, there is no evidence that beyond the petitioning church, the governing body of the petitioner's denomination defines and recognizes the position of a religious instructor.

Accordingly, the petitioner has failed to establish the beneficiary's position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

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.