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U.S. Citizenship
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CJ

MAR 28 2005



FILE:

[REDACTED]
LIN 00 265 51066

Office: NEBRASKA SERVICE CENTER

Date:

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, Nebraska Service Center. The Administrative Appeals Office summarily dismissed the petitioner's appeal, on the grounds that the petitioner had failed to submit a supplementary brief to set forth the basis for the appeal. The petitioner has filed a motion to reopen the proceeding, and produced evidence that the supplement was indeed timely submitted. Therefore, the petitioner's motion will be granted and the appeal will be considered on its merits. The appeal will be dismissed.

The petitioner describes itself as a "not-for-profit church corporation." 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 an "Attunement Practitioner and . . . Spiritual Retreat Director." The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation, or that the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition.

On appeal, the petitioner submits various letters intended to clarify the nature of the beneficiary's work, as well as a copy of a training certificate from 1973.

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, 2003, 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, 2003, 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 this proceeding is whether the petitioner has made a qualifying job offer. 8 C.F.R. § 204.5(m)(2) offers the following 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.

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.

Citizenship and Immigration Services (CIS) 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.

The petitioner operates seminary training facilities and retreat centers in the United States and in other countries. The petitioner seeks to employ the beneficiary as the spiritual retreat/conference director at one of these facilities, known [REDACTED] the petitioner's director of operations and corporate secretary, asserts the Sunrise Ranch is "a state-of-the-art conference and training center." She describes the beneficiary's work:

For the last several years [the petitioner] has focused on updating and re-designing its seminary training, its "core-material" training classes, and expanding its public events. [The beneficiary's] extensive experience as a church member and as a conference-facility manager has been an integral part of this task. She is responsible for re-designing and expanding our infrastructure (people, protocols, systems, and physical plant) to accommodate the changes in our spiritual education programs. Her work has drawn from her extensive experience in the hospitality industry. In addition to scheduling events and staff, she must work closely with our Board of Trustees and ministerial staff to assure the physical and spiritual setting meets [the petitioner's] ecclesiastical standards.

Ms. [REDACTED] also discusses a practice known as "attunement." A brochure reproduced in the record states "[t]he attunement process is a no-touch approach to releasing a radiant current of blessing, primarily through the hands. It recognizes the endocrine system as an essential portal through which this energy is received." A promotional brochure indicates that [REDACTED] offers attunements to guests. Ms. [REDACTED] asserts that "Attunement is an important ceremony in which most members choose to participate," and that "[p]articularly dedicated members may undergo training to become certified as Attunement Practitioners. . . . [The petitioner] has extended an offer of employment to [the beneficiary] as an Attunement Practitioner and as Spiritual Retreat Director conditioned upon approval of our petition."

Ms. [REDACTED] asserts that the beneficiary "will be working regularly in the [REDACTED] Sanctuary each week." The record contains a copy of a certificate issued by the International Emissaries Attunement Guild, designating the beneficiary a "Practitioner of Attunement base on her Completion of Attunement Training in 1984 / Acceptance of The International Emissaries Attunement Guild Code of Ethics / Dedication to the Purpose of Assisting in the Work of Spiritual Regeneration of Humanity, Under the Inspiration of the Spirit of God." Although the training was completed in 1984, the certificate was not issued until September 18, 2000, four days before the petition was filed.

The director instructed the petitioner to submit further information about the beneficiary's work, and to whether the petitioner considers the beneficiary's position to be a religious profession or a religious occupation. In response, [REDACTED] has asserted that the beneficiary "is involved in a religious occupation." Ms. [REDACTED] stresses the petitioner's "conviction of a need for a *collective* grouping on earth to express the spirit of God. This emphasis on collective function finds form in our communal settings and in the convening and hosting of conferences, classes and seminars." Ms. [REDACTED] asserts that the beneficiary's work as a conference director "is so closely related to our religious principles that it must be said to relate to a traditional religious function."

Ms. [REDACTED] has provided a detailed "job description for the Sunrise Conference Director," although this is not the exact job title specified in her earlier statements. This job description includes fifteen basic duties, most of them broken down into sub-categories. The fifteen basic duties are:

- 1) Assure that all of the duties and activities described here are consistent with and comport with the spiritual principles of the Church.
- 2) Reception Desk.
- 3) Public relations and advertising.
- 4) Conference bookings and contracts.
- 5) Accommodation scheduling.
- 6) Staff scheduling.
- 7) Office function.
- 8) Room set-up.
- 9) Snack & meal hosting.
- 10) Homekeeping liaison.
- 11) Kitchen liaison.
- 12) Maintenance liaison.
- 13) Conference hosting for each specific event.
- 14) Invoicing and collections.
- 15) Budgeting and long-range planning.

Of these fifteen duties, only the first is specifically religious in nature. It is broken down into three sub-categories:

- A) Liase with ministers and spiritual leaders (Board of Trustees) regarding the Conference services.
- B) Assure that "public" events do not conflict with previously scheduled religious celebrations, spiritual education programs, and seminary training programs.
- C) Demonstrate and exemplify the spiritual principles of the church in all aspects of the job description and the day-to-day operation of the Sunrise Conference Center.

The above requirements do not involve active religious duties *per se*, so much as ensuring that the center's general activities do not violate the petitioner's doctrines. The list of duties presented is overwhelmingly secular, and items 2 through 15 appear to be indistinguishable from the duties of a managerial-level employee in the secular hospitality industry. The above list of duties does not include the practice of attunement. The petitioner has never represented that the beneficiary's work as an attunement practitioner would occupy a significant percentage of her working hours.

The director determined that “the duties of the position appear to be largely secular in nature and not directly related to the religious creed of the denomination. The majority of the duties involve office duties in which the beneficiary’s experience as a manager in the hospitality industry is the key qualification.”

On appeal from the director’s decision, Ms. ██████ contends that the beneficiary’s “position is, in fact, ‘directly related to the religious creed of the denomination.’ The position is not ‘largely secular in nature.’ . . . [T]he position requires specific religious training other than being a member of the denomination.”

To support these claims, Ms. ██████ stresses the religious origins of the ██████ facility and offers quotations from officials of the denomination. Regarding the staff of the petitioner’s various facilities, Ms. Hunter asserts:

These people are required to have specific Emissary training, including participation in our Server’s Training School, Assemblies, to have continuing religious education through attending seminars periodically and to gain experience in our religious practice by living in Emissary community for several years. *This position has never been held by a person who does not have this training.* It is preferred that they are also trained in our spiritual practice known as Attunement.

It remains that the beneficiary’s duties, as described in the 15-point job description submitted previously, are nearly all secular in function, involving administrative and managerial tasks rather than clearly religious functions.

Ms. ██████ states that the beneficiary attended the petitioner’s Servers Training School from 1970 to 1973. The petitioner submits a copy of a training certificate dated 1973. Ms. ██████ asserts that the beneficiary’s “religious education and training was summarized in Exhibit B, pages 2 and 3, of the original Petition,” but that document (an earlier letter from Ms. ██████ contains no reference to Servers Training School. It indicates only that “[f]rom 1970 forward, [the beneficiary] completed numerous Emissary spiritual education courses.”

Ms. ██████ asserts that the beneficiary has spent, and will continue to spend, “at least 20 hours of each week . . . in the following manner:”

- Participation in and frequently conducting regular worship services (3 hours)
- Offering attunements to staff and community residents (4 hours)
- Providing guests with opportunities to share in the religious functions of the hosting community, e.g. worship services, weekly meditations using Emissary literature (2 hours)
- Offering attunements to conference and retreat guests (4 hours)
- Impromptu spiritual teaching as requires on a case by case basis (4 hours)
- Communication with Spiritual and leaders [sic] . . . (3 hours)
- [The beneficiary also participated at least 3 times per year in regional, usually week-long, Emissary seminars where spiritual (liturgical and further attunement) training are offered to Emissary religious leaders.

We cannot ignore the fact that, apart from the attunements referenced earlier, none of these duties appear on the exhaustively detailed list of duties that the petitioner had submitted earlier, despite the fact that these religious duties purportedly occupy half of the beneficiary’s working hours. A letter from her former

employer in Canada likewise listed numerous secular duties but contained no mention of any of the above functions.

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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service (now CIS) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner submits letters from various ministers, stating that the beneficiary provided invaluable assistance when their church groups held retreats at [REDACTED]. While some of these witnesses discuss talks presented by the beneficiary, most of her assistance appears to have been logistical in nature, which is consistent with the most detailed version of the conflicting job descriptions that the petitioner has submitted. For instance, [REDACTED] of American Baptist Churches states that the beneficiary "assisted us in any arrangements we needed" and "provided valuable information and services for us." Rev. [REDACTED] of [REDACTED] Church states that the beneficiary "acted as host and liaison."

The petitioner's early descriptions of the beneficiary's work, including a highly detailed job description listing fifteen basic duties and dozens of auxiliary responsibilities, show predominantly secular responsibilities. The petitioner's subsequent claim that half of the beneficiary's time is devoted to never-before-mentioned religious duties lacks credibility.

The remaining issue raised by the director concerns the beneficiary's prior 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." The petition was filed on September 22, 2000. Therefore, the petitioner must establish that the beneficiary was continuously working in the position offered during the two-year period immediately prior to that date.

In a letter submitted with the petition, [REDACTED] describes the beneficiary's past experience:

[The beneficiary] has been a residing member of [the petitioning organization] since 1995 when she began living and working at Edenvale, [the petitioner's] affiliate church and retreat center in Abbotsford, British Columbia, Canada. From 1995 through 1998 [the beneficiary] managed Edenvale's large kitchens, health food stores, and many substantial public events which are all part of [the petitioner's] ministry. . . .

In January 1999, [the beneficiary] came to Sunrise Ranch as part of [the petitioner's] Voluntary Service Worker program.

As noted above, the beneficiary received a Practitioner of Attunement certificate on September 18, 2000. Ms. [REDACTED] has indicated that the beneficiary will be employed as an attunement practitioner contingent upon the

approval of the petition; the record contains no evidence or indication that the beneficiary has, in the past, worked in this capacity. Therefore, the initial submission is devoid of evidence that the beneficiary worked as an attunement practitioner throughout the qualifying period.

In a subsequent submission, the petitioner has presented a letter from [REDACTED] executive director of the petitioner's offices in British Columbia, who states that the beneficiary was "Director of our Edenvale Conference and Retreat services . . . from May 1, 1995 to February 28, 1999."

In denying the petition, the director noted that the dates provided by Mr. [REDACTED] overlap with the dates provided earlier by Ms. [REDACTED]. The petitioner had originally claimed that the beneficiary entered the United States on January 31, 1999, and began working for the petitioner that same month (and thus necessarily the same day), which contradicts the assertion that she worked in Canada until the end of February 1999.

On appeal, Ms. [REDACTED] asserts that the beneficiary worked at Edenvale until December 31, 1998, and that Mr. Schmunk's letter "erroneously documented [the date] as February 28, 1999." The appeal includes no new letter from Mr. [REDACTED] to confirm that his earlier letter was in error. We note that Ms. [REDACTED] new claim leaves a one-month gap between the end of her employment in Canada and the beginning of her work in the United States, with no indication that the beneficiary was employed by anyone during that time, and therefore the beneficiary's employment from September 1998 onward was not "continuous" as required in both the statute and the regulations. While a short vacation does not interrupt the continuity of employment, a month-long period of unemployment does interrupt that continuity.

In addition, given the director's finding that the beneficiary's duties do not constitute a qualifying religious occupation, then the beneficiary cannot have accumulated two years of experience in a religious occupation during the qualifying period.

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 summary dismissal dated July 18, 2002 is withdrawn. The appeal is dismissed on its merits.