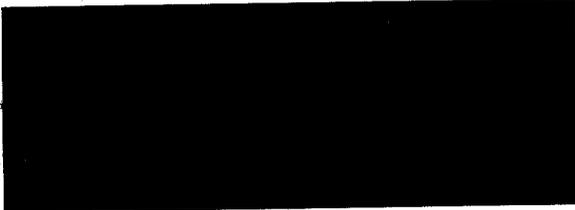


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**U.S. Citizenship  
and Immigration  
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FILE: [REDACTED]  
EAC 03 079 53034

Office: VERMONT SERVICE CENTER

Date: NOV 22 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: 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.

*Mari Johnson*

9 Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) 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 a community integration coordinator. The director determined that the petitioner had not established that the position qualifies as that of a religious worker.

Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit, and indicated that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than two years after the appeal was filed, no further documentation in support of the petition has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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 issue presented on appeal is whether the petitioner established that the position qualifies as that of a religious worker.

According to the regulation at 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker. 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 would reasonably be expected to perform services 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. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

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 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 proffered position is that of community integration coordinator. In its letter of December 31, 2002, the petitioner's pastor, Reverend [REDACTED] stated:

[The beneficiary] will continue to be responsible for coordinating and developing programs to integrate our Spanish congregants to the Methodist-American style of life. [He] will continue to organize events based around biblical notions of family-building in order to attract recently settled Methodists into our congregation. Most importantly, he will continue to be responsible for welcoming our new congregants, integrating them into the church's activities and facilitating the transition from a Hispanic experience to an American way of life. [He] will continue to introduce new congregants to an array of programs with the objective of assisting them in adjusting to their new religious and social environment. Our programs offer a variety of classes and courses to our congregants, such as Biblical Messianic Lectures, Biblical Lectures, Hymns and classes.

In a letter dated August 26, 2003, submitted in response to the director's request for evidence (RFE) dated June 6, 2003, [REDACTED] stated that he had been the pastor of the petitioning church for over ten years, and that he served as director of ecumenical pastoral ministry for the "North Shore Inter-Faith Clergy Association, which serves over 35 houses of worship in northern Nassau County, New York." [REDACTED] stated that it was in these capacities that he was authorized to create the proffered position for both organizations, and that the position grew out of a need to acquaint and encourage immigrants to participate in the various assistance programs offered by the community.

The petitioner submitted a copy of a "new position opening" by the North Shore Inter-Faith Clergy Association, effective as of January 1, 2001, for a community integration coordinator with the following job duties:

Coordinator will work primarily with the Spanish Community in Glen Cove and particularly with Spanish persons in member churches of the North Shore Inter-Faith Clergy Association. He/She will assist in leading worship, teaching church school, and encouraging Spanish community to select and attend the house of worship of their choosing. Coordinator will assist with issues including but not necessarily limited to housing, medical issues, adult education opportunities, ESL programs. Develop programs and provide individual consultations to assist newly arrived immigrants to successfully integrate themselves into the community and into the religious faith/denomination of their choice.

The posting indicated that the position would require a "minimum" obligation of 40 hours per week with a starting pay of \$13,500. Thus, the evidence indicates that the position was created just prior to the beneficiary's hiring and did not exist in any of the participating denominations prior to 2000.

Additionally, we note that in paperwork filed in 2002 in connection with the beneficiary's removal proceedings, [REDACTED] while writing in general terms of the beneficiary's assistance with the Inter-Faith Clergy Association, does not state that the beneficiary was hired for this position in 2001. A December 12, 2002 newspaper article, also submitted in connection with the removal proceedings, stated that the beneficiary "landed a job cleaning pools, became a volunteer at the shelter and did the readings in English at church on Sundays." Thus it appears that the beneficiary has not been working for the petitioner in the stated capacity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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, 591 (BIA 1988).

The director determined that the petitioner had not established that this position required any specific religious training. We withdraw this statement by the director, as neither the statute nor the regulation requires specific training for this religious occupation.

Nonetheless, we find that the petitioner has offered conflicting evidence about the date that this position was established and whether it even exists within the petitioning organization. The petitioner's evidence establishes that the religious duties of the proffered position, if it exists, are incidental to the primary job, that of ensuring that immigrants avail themselves of the assistance offered by the church and the community. The petitioner has not established that the duties of the position are primarily religious in nature. For these reasons, the petitioner has not established that the position qualifies as that of a religious worker within the meaning of these proceedings.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

Beyond the decision of the director, the petitioner has not established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form 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 years 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."

The regulation at 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 January 9, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a community integration coordinator throughout the two-year period immediately preceding that date.

Documentation submitted by the petitioner indicates that the beneficiary assumed this position no later than January 1, 2001, following authorization by the North Shore Inter-Faith Clergy Association to create and hire for the position. The petitioner submitted copies of the North Shore Inter-Faith Clergy Association "Summary Report to Member Churches," which purport to document the beneficiary's work as a community integration coordinator from January 2001 to July 2003. These reports are "approved" by [REDACTED] but it is unclear as to when they were prepared. The petitioner also submitted copies of "pay envelopes" purportedly evidencing the beneficiary's compensation as a community integration coordinator during the two-year qualifying period. There are no pay stubs, payroll records, or Forms W-2, Wage and Tax Statements, to corroborate the claimed employment.

Further, as discussed above, the documentation submitted in conjunction with the beneficiary's removal proceedings and evidence that he worked as a pool cleaner do not establish that he was working in this position on a full-time, compensated basis. *Matter of Ho*, 19 I&N Dec. at 591-92.

As the evidence regarding the beneficiary's work during the two-year period is inconsistent, the petitioner has not established that the beneficiary was continuously employed in a qualifying religious occupation for two full years prior to the filing of the visa petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.