



U.S. Citizenship
and Immigration
Services

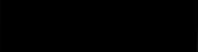
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FILE:



Office: TEXAS SERVICE CENTER

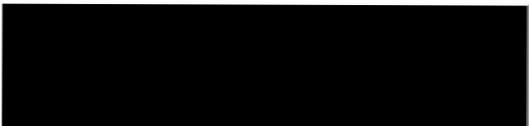
Date: SEP 08 2006

SRC 05 228 52356

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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 private Catholic school. 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 business manager. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

On appeal, the petitioner submits a copy of a position description and other materials.

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 in contention 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 regulation reflects that

nonqualifying positions are those whose duties are primarily administrative or secular in nature. 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 petitioner’s initial submission did not include any description of the beneficiary’s duties. The director requested such a description. In response, the petitioner has submitted a statement from the beneficiary, who describes his duties as the business manager of Oaklawn Academy from 2002 to 2005. The list of duties is over two pages long. The first ten entries are broadly representative of this list:

To Consult and coordinate with Business Administrator concerning all business and administrative issues.

To assist Director and Operation Manager in the coordination of all business related matters.

To supervise company and maintenance personnel. Meet at least bi-monthly to discuss priorities, progress and direction and provide appropriate performance feedback.

To act as facility manager and supervise physical plant issues, including meeting local building and fire code requirements.

To act as material manager to meet the material and service needs for the organization.

Responsible for all business and personnel related record keeping.

To manage the occupational safety and employee health programs.

To manage all financial and budgetary matters, including budget preparation, accounting, billing and banking functions.

To coordinate the hiring and termination process for the organization.

To act as a benefits coordinator, providing assistance to employees as needed.

The beneficiary concludes the list of duties by stating: “As a Catholic I embraced the mission of the company and focused in reaching its goals,” but the beneficiary listed no specific job duties that relate in any discernible way to Catholic religious practices.

The director denied the petition, stating that the beneficiary’s position appears to be mostly administrative and, therefore, secular.

On appeal, [REDACTED], director of development at the petitioning school, states:

Attached please find a copy of the Position Overview of a Business Manager for the [beneficiary]. Also, there is a[n] explanation of the need for our school with area demographic data, education options, both private and public.

I do not understand why the application was denied in the first place because [the beneficiary] had already been granted R1 status previously. The job duties are exactly the same as those [for] which his visa was issued.

The job description attached to the appeal reads, in full:

Your Kingdom Come!
Business Manager
NCE School
Position Description

POSITION OVERVIEW

1. The business manager has overall responsibility for providing the business management services necessary to achieve the school's education mission.
2. The business manager has responsibility for the following areas:
 - a. administration
 - b. financial management
 - c. legal and tax
 - d. facilities management
 - e. personnel management
 - f. purchasing
 - g. food services
 - h. information technology management
3. The business manager is responsible for planning and executing effective administration practices in line with the board approved policies and procedures.
4. The business manager must carry out his responsibilities with the awareness that he is above all an apostle of Christ. His life, witness of faith and his professional dedication should serve as an example of the seriousness by which he views the mission entrusted to him. He should at all times model the characteristics of an effective Christian leader.

The petitioner has not shown that any of the listed areas of responsibility pertain to traditional religious functions within the Catholic church. Rather, they are administrative functions found in secular as well as religious entities, with no evidence that the religious nature of the school has any substantive effect on the nature of the duties of the business manager's position.

The addendum requiring "the awareness that he is above all an apostle of Christ" cannot suffice to overcome the inherently secular nature of the position. Otherwise, the petitioner could label any job a "religious occupation"

simply by requiring such “awareness.” The plain language of the regulation indicates that there are limits to what constitutes a religious occupation, and that these limits are defined by the nature of the duties performed, rather than by the mental attitude or motivation expected of workers.

While the determination of an individual’s status or duties within a religious organization is not under the purview of CIS, the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). We note also that, in *Rhee*, the BIA cautioned that, if eligibility rested simply on labels and terminology, “Congressional policy in the field of immigration could be readily circumvented by accommodating religious organizations.” *Id.* at 610.

To establish “the need for our school,” the petitioner resubmits a previously submitted document indicating that local “Catholic families are being forced to enroll their children in public or non-Catholic private schools” due to a lack of space in nearby Catholic private schools. This information is irrelevant to the matter at hand because it does not address the basis for the denial. The issue here is not whether San Antonio needs another Catholic school, but whether the business manager of that school works in a qualifying religious occupation.

The petitioner asserts that the beneficiary “has already been granted R1 status” as a nonimmigrant religious worker, based on “job duties [that] are exactly the same” as those of the proffered position. If the beneficiary previously received R-1 status based on the same job description shown in the current record, then the prior approval would constitute material and gross error on the part of the agency that granted the R-1 application. The current record of proceeding does not include any documentation or evidence underlying the beneficiary’s admission as an R-1 nonimmigrant, and therefore the AAO is not currently in a position to comment on the merits of that evidence.

We concur with the director’s finding that the beneficiary’s duties, as described, are administrative and secular, and they do not take on the color of traditional religious functions simply because the beneficiary performs those duties on behalf of a religious institution.

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.