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U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: SEP 08 2006

SRC 05 112 50611

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, 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 sustained and the petition will be approved.

Part 1 of the Form I-360 petition identifies both the beneficiary (as **an individual**) and [REDACTED] (as an organization) as the petitioner. The director has referred to [REDACTED] as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or **petitioner must sign his or her application or petition.** 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any official of [REDACTED] but by the alien beneficiary himself. Thus, the alien, and not [REDACTED] has taken responsibility for the content of the petition. In materials accompanying the initial filing, both counsel and the church's pastor acknowledge that the alien beneficiary is the one who filed the petition. The director's erroneous identification of [REDACTED] as the petitioner will not affect the adjudication of the appeal, because the alien's attorney of record received the director's notices and filed the appeal. Thus, the appeal has been properly filed.

The petitioner seeks classification 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 associate minister at [REDACTED]. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

On appeal, the petitioner submits new letters, copies of previously submitted documents, and a brief from counsel.

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 employment in a qualifying vocation or occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

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.

8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to demonstrate that, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested. 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that, if the alien is to work in a religious occupation, he or she is qualified in the religious occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the type of work to be done relates to a traditional religious function.

Citizenship and Immigration Services 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 a letter accompanying the initial filing, [REDACTED] pastor of [REDACTED], states:

[The petitioner] has been with us ever since [August 1, 2002] faithfully performing his duties as an Associate Minister, assisting in all pastoral duties at the church in a full-time capacity. Furthermore, [the petitioner] has held a ministerial license with the United Pentecostal Church International since May 2002. . . .

Additionally, [the petitioner] is actively involved with the Texas District United Pentecostal Church-Youth Division as one of the ministry coordinators. . . . Finally, [the petitioner] has published various religious articles and teaching materials.

A copy of the petitioner's "Local License in the United Pentecostal Church International" indicates that the petitioner "is hereby authorized to preach the gospel." An accompanying "Annual Fellowship Card" identifies the petitioner as "a local licensed minister of the gospel in good standing."

The initial petition includes tax documents showing that the petitioner earned his income from Beaumont First United Pentecostal Church and from New Life Christian Academy. Both entities show the same address as [REDACTED] [REDACTED] has explained that these various entities are branches of [REDACTED]

On May 28, 2005, the director issued a request for evidence, instructing the petitioner to "submit a detailed job description," including "a breakdown of the number of hours devoted to each of the beneficiary's proposed job duties." The director also requested information regarding "the requirements for [the petitioner's] position in this religious entity or organization."

In response, the petitioner submits a printout from <http://www.upci.net/locallicense.htm>, which states:

Local licensing is the first step in the process of licensing. All local license holders are entitled to:

1. A subscription to the Pentecostal Herald
2. A subscription to the Forward Magazine
3. Life insurance package
4. Perform funeral ceremonies

The printout shows three hierarchical levels of licensure: Local, General and Ordination. Information in the record, including copies of the Manual of the United Pentecostal Church International, shows "Local" to be the lowest of these ranks. Because local license holders are authorized to perform only a limited range of duties of the clergy, we do not consider the petitioner to be a "minister" as 8 C.F.R. § 204.5(m)(2) defines that term. We shall, instead, consider whether the petitioner's position qualifies as a religious occupation.

Pastor Treadway provides the following description of the petitioner's weekly duties:

New Life Christian Academy – school duty	20 hours
Pastoral care	13 hours
Administration	10 hours
Services	10 hours

NLCA school duty:

- Teaching students using Accelerated Christian Education program in Christian environment
- Mentoring, disciplining and counseling students
- Developing school wide class rules and organizing the classroom
- Coordinating morning devotion

Pastoral care:

- The beneficiary meets with new members [on a] weekly basis to help them in spiritual life individually.
- Weekly, the beneficiary visits several senior members who can not physically attend regular services.
- The beneficiary is a primary minister to visit sick members in the hospital as a pastoral care.
- The beneficiary meets with young adults of the congregation individually for the time of pastoral care and counseling, and serves as the College & Career pastor for the congregation.
- The beneficiary is responsible to care [for] attendee[s] who are not yet members, and guide them to become a part of the congregation.
- On demand basis, the beneficiary conducts funerals.

Administration:

- The beneficiary is responsible for membership data management for the congregation
- The beneficiary is responsible to coordinate public relation[s] effort[s] for the congregation including advertisement, promotion, marketing strategy, and web site.
- On demand basis, the beneficiary forms new ministries and religious programs within our local congregation.
- The beneficiary coordinates multi-media ministry of the church.
- The beneficiary coordinates and organizes College & Career ministry.

Services:

- The beneficiary participates in weekly religious services on Sunday and Wednesday.
- The beneficiary teaches a bible class every Sunday.
- The beneficiary is responsible to coordinat[e] services, and serves as a master of ceremonies every Wednesday.
- The beneficiary conducts weekly prison service in Jefferson County Correctional Facility in Beaumont, Texas.
- On demand basis, the beneficiary fulfills preaching responsibility of the church.

In a separate letter, Pastor Treadway offers this summary of the petitioner's duties:

[The petitioner] is to spend approximately 20 hours a week at New Life Christian Academy fulfilling his role as an instructor, director of the computer lab, and the other school duties mentioned above. [The petitioner] is also to spend 13 hours per week visiting, meeting, calling, writing, mentoring and counseling our Church members as well as potential member[s] in order to fulfill his pastoral care duties. Furthermore, [the petitioner] is to spend 10 hours organizing our multimedia ministry, coordinating promotion and marketing efforts, drug education classes, financial management classes, coordinating events, processing paper work, and other necessary tasks as they arise in order to fulfill his responsibilities in the

administration of the Church and its ministries. Moreover, [the petitioner] is to spend 10 hours per week attending our three weekly regular services, conducting meetings in the prison system, teaching Bible Studies, teaching Sunday School classes, and conducting other Church-affiliated meetings.

Regarding the qualifications for the position [REDACTED] states:

To fulfill the capacity of the Associate Minister, the individual must obtain a ministerial license from United Pentecostal Church, International. To obtain and hold a license with United Pentecostal Church, a minister must be 17 years of age or over. Also, a minister must have preached an average of one sermon each week for a period of six months or more before being examined by the District Board in relation to their call to the ministry.

In denying the petition, the director discussed the beneficiary's work schedule and found that "the beneficiary does not work principally performing religious activities. . . . The evidence does not show that this is or ever was a paid position . . . requiring specified credentials or formal religious education." The director concluded that the qualifications for the position are so minimal that "any dedicated member of the congregation would be able to work in this position."

On appeal, counsel asserts that the petitioner "qualifies as a Special Immigrant (Religious Worker) in both his capacity as a minister of [REDACTED] and in his capacity as a religious instructor at New Life Christian Academy." As noted earlier in this decision, the petitioner's ministerial prerogatives appear to be somewhat restricted – counsel acknowledges that the petitioner has performed only one wedding ceremony, and even then a more-qualified minister was present to supervise – and therefore we shall concentrate on the question of whether his position is a religious occupation.

Counsel asserts that the director did not explain the finding that the petitioner is not "principally" engaged in qualifying religious duties. Counsel contends that the breakdown provided by the church demonstrates that religious duties, such as counseling and religious education, predominate in the petitioner's work schedule. Upon consideration, we agree with counsel's assessment. While some duties, such as administrative functions, are not religious in themselves, these duties appear to be necessary auxiliary functions rather than the main focus of the petitioner's work. The petitioner's occasional performance of these necessary administrative functions does not dilute the otherwise religious character of his work. Similarly, while the petitioner appears to teach some secular subjects at New Life Christian Academy, this is not his sole or primary role at that school

Counsel also demonstrates that the director relied upon an incomplete accounting of the requirements and credentials for the position. While the director essentially quoted a church official in rendering this judgment, other documents in the record corroborate counsel's assertion. We also concur with counsel's assertion that an over-reliance on a "formal training" requirement is misplaced.

Upon consideration of the evidence in the record, we find that the petitioner's position as an associate minister meets the regulatory requirements of a religious occupation. Because this was the sole basis for

denial, and because review of the record reveals no other obvious deficiency or evidence of ineligibility, we find that the petitioner has satisfactorily established eligibility for the classification sought.

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 met that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.