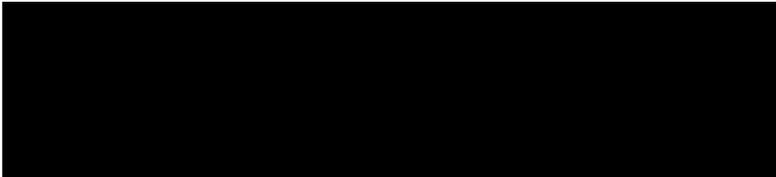




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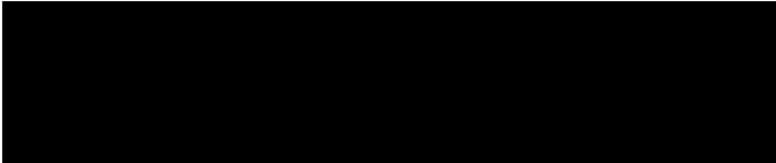
FILE: WAC 06 035 50283 Office: CALIFORNIA SERVICE CENTER Date: JUN 13 2007

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.

Maura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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.

The petitioner is a local base of Youth With A Mission (YWAM), an international, interdenominational evangelical Christian missionary organization. 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 assistant ministry director. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel and copies of various documents, some of them previously submitted.

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.

In a letter accompanying the petitioner's initial submission, [REDACTED], Personnel Director of the petitioning organization, stated that the petitioner is:

a non-ordained missionary worker, serving as the assistant ministry director of this base, leading and directing the operations of several of this organization's ministries; ministries involving missionary work, religious training, and mercy ministries to the poor in the name of Christ. . . .

[The beneficiary's] work with our ministry also involves taking church teams and youth groups out into the city of San Diego and across the border into . . . Mexico to preach the gospel. . . . [The beneficiary] regularly will share publicly on the street the teachings of Jesus Christ and seek to communicate to the crowds how these truths apply to our lives. . . .

[The beneficiary] is involved in the overall leadership of the organization. He assists the director in overseeing the students, other missionary workers, and the operation of the base.

[REDACTED] asserted that the beneficiary's "work is by no means a secular position within a religious organization," but rather encompassed religious functions such as "evangelism (conversion of others), assistance with the poor, and religious teaching."

In a separate, unsigned letter, the petitioner indicated that the assistant ministry director oversees the petitioner's Discipleship Training School, Mission Adventures, and Homes of Hope; trains missionaries; and undertakes various other responsibilities.

The petitioner submitted a copy of its articles of incorporation. We shall discuss this document in greater detail later in the decision. The document refers to a Board of Directors but not to an assistant missionary director.

On March 24, 2006, the director instructed the petitioner to "[e]xplain how the duties of the position relate to a traditional religious function," and to "[s]ubmit a copy of the religious organization's by-laws, letters from authorized officials of the religious organization in the United States, or other evidence indicating that the duties are directly related to the religious creed of the denomination, and that the position is defined and recognized by the governing body of the denomination."

In response, [REDACTED] stated:

Among his job duties, [the beneficiary] oversees the Discipleship Training School, which is the base's five-month Christian Missionary training school for post high school youths. [The

beneficiary] also oversees Mission Adventures, a ministry for high school students to learn to share their Christian faith and to help the poor and needy in Mexico. He also oversees the Homes of Hope Ministry in which our base coordinates Christian church teams to build a home for a needy family in a 2-3 day period. Evangelism and prayer are a part of all of [the beneficiary's] job duties.

A review of his job duties shows that [the beneficiary's] occupation is a religious occupation, involving religious training and instruction, missionary work, prayer and working on behalf of a religious organization as it works among the poor and needy.

With regard to a "governing body," the petitioner submits materials indicating that the organization has "international and regional offices, [but does] not have an international administrative headquarters."

The petitioner submitted its bylaws, Article IV of which concerns the composition and authority of the petitioner's Board of Directors. Like the articles of incorporation, the bylaws mention no assistant ministry director. We will discuss this document in the context of the appeal.

The director denied the petition on July 6, 2006. In the notice of decision, the director listed the beneficiary's stated job duties, but did not comment on the specifics of those duties. The director simply stated the conclusion that "the information the petitioner submitted does not establish that the proffered position relates to a traditional religious function." The director also stated that the petitioner's articles of incorporation and bylaws list various corporate officers, but do not "mention the position of Assistant Ministry Director." The director also asserted that officials of the petitioning organization did not attest to the existence of such a position.

On appeal, counsel argues that "a review of the [beneficiary's] duties show that they are religious duties," involving such clearly religious functions as prayer meetings and evangelism. Work with the poor, while by no means an exclusively religious activity, is another function associated with many Christian denominations. 8 C.F.R. § 204.5(m)(2) specifically indicates that missionaries work in a religious occupation. Given that the beneficiary's stated duties involve training and supervising such missionaries, it is difficult to see how the director arrived at the conclusion that the beneficiary's work is not a religious occupation.

The record does not contain letters from top-level YWAM officials affirming the existence and religious nature of the beneficiary's position, but this is not a fatal deficiency. Materials in the record, submitted prior to the denial and resubmitted on appeal, indicate that each YWAM is an independent corporate entity responsible for its own staffing and other matters; the international umbrella organization carries out no administrative functions, concerning itself more with matters such as doctrine. Therefore, there is no clear reason why YWAM, at a national or international level, would concern itself with the petitioner's internal staffing matters.

Because the director's decision relies so heavily on the contents of the petitioner's articles of incorporation and bylaws, we return now to those documents. Article IV, "Directors," of the articles of incorporation begins: "The Board of Directors is invested with the management and disposition of affairs of the

corporation.” The articles further state: “The Directors shall serve for a term of one to five years. . . . No Director may serve longer than five years without voluntarily resigning from the Board for a period of at least one year.” The petitioner’s Internal Revenue Service Form 990 Return of Organization Exempt From Income Tax lists five “Officers, Directors, Trustees and Key Employees” and indicates that none of them are compensated for such functions.

Like the articles of incorporation, the bylaws indicate that the Board of Directors will have a rotating membership with no permanent members. Article 4.5 indicates that “no more than 49% of the Board should be those who actively serve as YWAM staff at any YWAM base.” This article proves that not every member of the Board of Directors is employed on the petitioner’s staff. Furthermore, Article 4.19 begins: “Whether or not employed by the Corporation for other purposes, Directors and members of any committee of the Board of Directors shall for their Director duties serve as volunteers without compensation” except for “reimbursement for any reasonable expenses incurred in attending meetings.” The wording of this clause presumes the existence of a class of compensated employees apart from the Board of Directors.

Neither the articles of incorporation nor the bylaws comprise a comprehensive list of managers, supervisors or other staff. The “directors” discussed therein are not directors of the petitioner’s program functions, but rather directors of the *corporation*. The bylaws clearly indicate that members of the petitioner’s Board of Directors are not paid for that function, and that only some of those directors are employees of the petitioning entity. Because the specific details of the documents deal exclusively with unpaid positions (while acknowledging generally the existence of paid positions), the absence of specific mention of the beneficiary’s position cannot reasonably be construed as disqualifying. We concur with counsel’s assertion on appeal:

To review bylaws or Articles of Incorporation of an organization in order to see a list of job positions within the organization is to misunderstand the purpose of Articles of Incorporation and bylaws. Bylaws and Articles of Incorporation are written to comply with the state’s legal requirement for the establishment and operation of a legal entity. The officers listed in the Articles of Incorporation and bylaws are not intended to be an exhaustive list of an organization’s job positions, either those in leadership positions or all others working with the organization.

To the above, we would add that the types of positions described in the articles of incorporation and bylaws are not particularly “religious” in and of themselves. The duties of a treasurer, for instance, are not inherently religious, and the treasurer of a religious organization would likely share many of the same duties as the treasurer of a secular corporation. Thus, even if the petitioner’s organizing documents specifically identified the position of assistant ministry director, this would not establish the religious nature of the position.

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.