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U.S. Citizenship
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Services

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JUN 22 2007

FILE: LIN 06 093 51148 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.

Laura Deadnick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 church belonging to the Presbyterian Church (U.S.A.) denomination. 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 religious instructor and missionary. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious instructor and missionary immediately preceding the filing date of the petition, or that the beneficiary's duties amount to a qualifying religious occupation.

On appeal, the petitioner submits copies of previously submitted letters and a short statement 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 first issue 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.

We note that the use of a job title taken from the above list is not *prima facie* proof that a given position qualifies as a religious occupation. 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.

Citizenship and Immigration Services 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.

In a letter submitted with the petitioner’s initial filing, [REDACTED] described the beneficiary’s duties at the petitioning church:

Her service includes evangelism and discipleship. Her ministry includes leading Bible studies, group prayer services and individual prayer, worship and the integration and application of Christian principles into life circumstances. . . .

[The beneficiary’s] weekly duties include the following:

1) Teaching and Discipleship of young adults – 10 hrs.

Includes researching and preparing sermon notes and teachings for each of the two weekly services. Prepare weekly support group meetings for those who are having difficulties at home or school. Instruct and supervise the youth group singing choir and band to participate in the annual events.

2) Prayer sessions – 10 hrs.

This includes daily personal prayer and weekly church prayer meetings including all attendees and outside support groups.

3) Church service support – 10 hrs.

Perform regular administrative tasks to maintain the church operations, financial management and preparation of official reports.

4) Manage Benevolence – 10 hrs.

On April 12, 2006, the director issued a request for evidence (RFE), instructing the petitioner to explain how the beneficiary’s listed duties relate to a traditional religious function, and how the beneficiary’s position qualifies as a religious occupation. In response, [REDACTED] stated:

[The beneficiary’s] position qualified as inherently religious and as an occupation because she is solely responsible for our international missionary team. As a religious organization, we have devoted 20% of our church tithes and offerings to our missionary team so that we can spread the word of God throughout the world. [The beneficiary] will be responsible [for] planning, scheduling, researching, and organizing each mission. On average, we send three teams of ten that includes children yearly. Because missionary [work] involves a great [deal] of planning and researching, the position has always been a full time position. . . .

[The beneficiary's] weekly duties include the following:

- 1) Plan and organize missions – 10 hrs.
Prepare weekly support group meetings for those who are interested in learning about mission. Organize fund raisers to raise money for mission. Communicate with senior pastors and elders [about] the progress of the mission team.
- 2) Prayer sessions – 10 hrs.
This includes daily personal prayer and weekly church prayer meetings including all attendees and outside support groups.
- 3) Church service support – 10 hrs.
Perform regular administrative tasks to maintain the church operations, financial management and preparation of official reports.
- 4) Research and scheduling – 10 hrs.

Items 2 and 3 on the above list are identical to the corresponding items on the petitioner's original list. Items 1 and 4, however, are completely different from the "Teaching and Discipleship of young adults" and "Manag[ing] Benevolence" shown on the petitioner's first list. The petitioner did not explain this significant alteration in the description of the beneficiary's claimed duties.

The director denied the petition on July 18, 2006, in part because "the petitioner's original description made no mention of planning, researching, scheduling and organizing an international missionary team." The director indicated that the petitioner could not improve the chances of approval simply by changing the description of the beneficiary's duties.

On appeal, counsel states, without further explanation or elaboration: "We did not intend to change the petition in any way, but rather clarify the duties involved." This claim lacks credibility, as the second version of the job description does not merely "clarify" duties previously mentioned. Rather, half of the beneficiary's claimed 40-hour work schedule was removed and replaced outright with entirely different duties. For instance, the first item on the original description, "Teaching and Discipleship of young adults," was described as follows: "Includes researching and preparing sermon notes and teachings for each of the two weekly services. Prepare weekly support group meetings for those who are having difficulties at home or school. Instruct and supervise the youth group singing choir and band to participate in the annual events." Whereas the petitioner originally referred to the beneficiary as "a religious instructor," the newer list of duties does not mention religious instruction at all. This is not an insignificant or cosmetic change.

The replacement item in the second description is not a variation or expansion of the item quoted above; it is completely different. Instead of "Teaching and Discipleship of young adults," the beneficiary was said to devote ten hours a week to "Plan and organize missions," involving these functions: "Prepare weekly support group meetings for those who are interested in learning about mission. Organize fund raisers to raise money for mission. Communicate with senior pastors and elders [about] the progress of the mission team."

If planning and organizing missions occupies fully one-fourth of the beneficiary's working hours, as the petitioner eventually claimed, then the petitioner would not have omitted that work entirely from the original schedule. The serious discrepancies between the two schedules cast doubt on the accuracy of both of them. 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, 586 (BIA 1988). 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. *Id.* at 582, 592.

The petitioner has provided seriously inconsistent descriptions of the beneficiary's duties, and on appeal the petitioner has offered no substantive response beyond counsel's vague assertion that the petitioner "did not intend to change" anything when it removed and replaced half of the beneficiary's schedule with completely different duties. We hereby affirm the director's finding that the petitioner has failed to establish that the petitioner has offered the beneficiary a *bona fide* position in a qualifying religious occupation.

The remaining issue concerns the beneficiary's past 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on February 8, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing her duties throughout the two years immediately prior to that date.

█ originally stated: "Since December 2002, [the beneficiary] has been volunteering and serving as a religious instructor and missionary for our church."

The petitioner's initial submission included letters attesting to the beneficiary's work in Korea prior to 2002, but no additional evidence to establish continuous employment during the 2004-2006 qualifying period. Treasurer's reports from the relevant years do not reflect any salary paid to the beneficiary. Accordingly, in the RFE, the director instructed the petitioner to "submit evidence that the beneficiary has been carrying on that religious occupation continuously between February 8, 2004 and February 7, 2006." The director specifically requested copies of tax and payroll documents, as well as evidence to show how the beneficiary supported herself during the qualifying period.

In response, █ stated that the beneficiary "has been carrying on as a Missionary continuously between February 28, 2004 and February 7, 2006. Since [the beneficiary] became a member of our organization, she has always worked as a volunteer. . . . [The beneficiary] has always received financial support from her husband while she pursues her mission with our church." The petitioner submitted copies of the beneficiary's income tax returns for 2004 and 2005. These documents identify the beneficiary as a "Homemaker" and her spouse as a "Sales Person."

The director, in denying the petition, cited case law in finding that the beneficiary's unpaid volunteer work does not constitute qualifying experience. The director further found that the petitioner has not produced adequate evidence that the beneficiary's past work was continuous. On appeal, counsel states: "Although the position offered was a paying position, [the beneficiary] did not accept compensation because she was a dependent of [an] H-1 [nonimmigrant] who can not accept paid employment." Counsel does not address the numerous precedent decisions that the director had cited in support of the denial. Furthermore, the petitioner's inconsistent descriptions of the beneficiary's duties call into question the true extent thereof.

While the petitioner has submitted letters describing the beneficiary's experience at other churches prior to the qualifying period, none of these letters indicate that the beneficiary has ever received compensation for her religious work at any church. The record contains no evidence that the petitioner, or any other church in the petitioner's denomination, has ever paid the beneficiary, or anyone else, to perform the functions described. This reinforces the finding that the beneficiary's activities, while arguably religious in nature, do not amount to a religious *occupation* (an "occupation" being an inherently remunerative endeavor). As the director reasoned, if the beneficiary has never before received payment for her activities, it cannot suffice for the petitioner simply to claim that the beneficiary will be paid to perform those same functions in the future.

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.