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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: OCT 18 2007

WAC 06 250 51219

IN RE:

Petitioner:

[REDACTED]

Beneficiary:

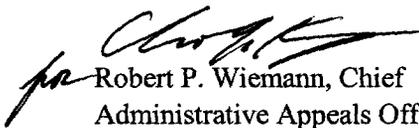
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

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, 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 [REDACTED]. 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 education teacher. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious education teacher immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits arguments from counsel and copies of teaching 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 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 August 10, 2006. Therefore, the petitioner must establish that the beneficiary was

continuously performing the duties of a religious education teacher throughout the two years immediately prior to that date.

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.

In a letter accompanying the initial filing, Sister [REDACTED] Principal of the petitioning school, stated that the beneficiary

has been a full-time Religious Education teacher at the school since September 2002. She works approximately eight (8) hours per day, Monday through Friday, and the weekends on some occasions, devoted solely to religious instruction, especially in the preparation of students to receive the Sacraments of Reconciliation (Confession) and First Holy Communion.

The position requires [the beneficiary] to prepare, assign and review Catholic religious lessons with our students. . . .

She has filled this position for the past four school years, consisting of the following periods:

September 1, 2002 to June 30, 2003  
September 1, 2003 to June 30, 2004  
September 1, 2004 to June 30, 2005  
September 1, 2005 to June 30, 2006

The beneficiary’s tax returns and Forms W-2 Wage and Tax Statements reproduced in the petitioner’s initial submission show the following earnings:

	2003	2004	2005
Salary from the petitioner	\$21,090.80	\$22,828.20	\$23,532.48
Total salary (rounded to nearest dollar)	\$27,583.00	\$38,031.00	\$36,581.00

On both the 2003 and 2004 tax returns, the beneficiary identified her occupation as “Teacher/Receptionist.” The corresponding page from the 2005 return is missing from the record.

On December 13, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit “a detailed description of the work to be done” and to explain “where the beneficiary’s extra income came

from.” In response, the petitioner submitted copies of Forms W-2 showing that Sunrise Senior Living Services paid the beneficiary \$6,492.01 in 2003, \$13,417.43 in 2004 and \$11,729.39 in 2005. These sums account for all of the beneficiary’s additional income in 2003, and most of it in 2004 and 2005.

With respect to the beneficiary’s duties, the petitioner submitted a new letter from [REDACTED]. This second letter is almost an exact copy of her first letter, the main difference being that the new letter indicates that the 2006-2007 school year had already begun. The description of the beneficiary’s job was simply repeated from the earlier letter.

The director denied the petition on February 14, 2007. In the decision, the director quoted the petitioner’s description of the beneficiary’s duties and stated: “the duties of the occupation have not been completely explained. The petitioner was offered an opportunity to clarify the beneficiary’s duties, but chose not to do so. Therefore, it cannot be determined if the beneficiary’s occupation is predominately religious in nature.”

The director also noted that the beneficiary identified herself as a “teacher/receptionist” on her tax returns, and that the beneficiary reported salary income from sources outside the petitioning school. The director stated, without elaboration, that “the submitted documentary evidence (tax returns, W-2s) contradicts Sister [REDACTED]’s assertion that the beneficiary’s position was full time.” Citing “unresolved inconsistencies and conflicting information,” the director concluded “it is not possible to determine whether the beneficiary has been performing full-time work as a religious education teacher for the two-year period immediately preceding the filing of the petition.”

On appeal, counsel correctly asserts that, in discussing the discrepancy between the beneficiary’s salary from the petitioner and the beneficiary’s total reported income, the director failed to take into account the documentation relating to the beneficiary’s “second, part-time job.” It is clear from the documents in the record that, in any given year, the beneficiary received the majority of her income from the petitioning school. The petitioner has also indicated that the school did not employ the beneficiary year-round, but rather from September through June of each year, with a two-month break each summer. This is entirely consistent with the usual practice of a summer hiatus for both students and staff, during which time the petitioner could supplement her income through outside employment that did not interrupt or conflict with her school employment. The beneficiary’s much lower earnings from Sunrise Senior Living Services are consistent with part-time or intermittent employment that did not interfere with her work at the petitioning school.

Counsel notes that the regulatory definition of “religious occupation” includes “religious instructors.” Less accurately, counsel claims that the RFE was “a ‘boiler-plate’ Request for Evidence that did not clearly articulate what evidence” was necessary. The RFE contained numerous details specific to the petition, such as figures from the beneficiary’s tax documents and discussion of the beneficiary’s nonimmigrant status in 2001 and 2002. Regarding the beneficiary’s early status, we note that the petitioner did not comply with the director’s request for tax records and other materials relating to the beneficiary’s employment in 2001-2002. This failure to provide requested information may have disposed the director to look unfavorably on the present petition. At the same time, the director did not explain how the beneficiary’s employment in 2001 and 2002, well before the 2004-2006 qualifying period, was directly relevant to the proceeding.

The petitioner submits, on appeal, copies of teaching materials used by the petitioning school. These materials establish that the school provides religious education, but they do not identify the teacher(s) providing that education. Therefore, these materials, by themselves, are not conclusive.

Nevertheless, the preponderance of evidence is in the petitioner's favor here. The record contains no evidence that the beneficiary performs non-qualifying secular duties for the petitioner. There are no inconsistencies or revisions in the petitioner's description of the beneficiary's duties that would give cause to question the credibility of the petitioner's claims, and there is nothing inherently questionable or improbable about the petitioner's assertions regarding the nature of the beneficiary's duties. The petitioner has provided the level of proof required by the regulations, and there are no relevant unanswered questions that would demand a higher standard of evidence. We find that the duties of a religious instructor at a Catholic school relate to a traditional religious function, and that the petitioner has credibly shown that the beneficiary is a religious instructor at a Catholic School.

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.