



U.S. Citizenship
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Services

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FILE: [REDACTED]
WAC 07 092 51036

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 15 2008**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

2 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 dismissed.

The petitioner is a Conservative Jewish synagogue. 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 Hebrew and religion teacher. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a Hebrew and religion teacher immediately preceding the filing date of the petition.

On appeal, the petitioner submits letters and substantial quantities of documents.

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 February 9, 2007. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Hebrew and religion teacher throughout the two years immediately prior to that date.

In a letter accompanying the initial submission, counsel stated: "The Temple is currently in the process of enlarging its membership and services rendered to the community. With this expansion in progress, the need for youth leadership and education will become critical. The Temple offers prayer services to individuals of all ages as well as educational activities for children ages 5 through 12 years." This wording indicates that the petitioner's educational activities are limited to children under 13. Otherwise, counsel would have stated that the petitioner "offers prayer services and educational activities to individuals of all ages." Counsel reinforced this by stating that the beneficiary had been "since February 2005 working solely for our institution, where she has taught elementary school children."

In a letter dated October 31, 2006, _____ the petitioner's Executive Director, also described the petitioner's educational program as "a Sunday School program [for] students ages 5 through 12 years old." _____ stated: "The Temple's program for Jewish education of young children is targeted mainly to the children and grandchildren of the members of the Congregation." While _____ stated that the petitioner "seeks to expand its religious educational programs," he made no mention of existing educational programs for persons over 12 years of age.

A copy of the petitioner's Hebrew School Curriculum has two parts, one labeled "Grades K-2, Ages 5-7" and the other labeled "Grade 6, Age 11."

The petitioner's initial submission did not include details about the terms of beneficiary's compensation as required by 8 C.F.R. § 204.5(m)(4). The only evidence of past remuneration included in the initial submission was an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, showing that the petitioner paid the beneficiary \$18,496.50 in 2005.

On March 19, 2007, the director instructed the petitioner to submit further evidence of the beneficiary's remuneration as well as a detailed description of the beneficiary's duties. In response, counsel stated: "The beneficiary's salary is now at \$33,010.00 per year." The petitioner also submitted a copy of the beneficiary's 2006 IRS Form W-2, showing that she received \$30,230.00 that year. Counsel did not explain why the beneficiary's 2005 remuneration was significantly lower. Instead, counsel stated that consideration of the petitioner's finances prior to the filing date would "cause undue prejudice to the employer." Counsel stated that the beneficiary "has also been entrusted with certain administrative activities" beyond her educational duties claimed previously, but the petitioner did not indicate how much time these additional duties entailed. The petitioner's failure to mention these activities in the initial submission suggests that the beneficiary had not yet begun performing them at the time of filing.

Copies of the beneficiary's IRS Form 1040 income tax returns show that the returns for 2005 and 2006 were both prepared on May 17, 2007. It is not clear why the beneficiary did not file tax returns for 2005 or 2006 until after the director asked to see them. On both tax returns, the beneficiary indicated her filing status as "single," although the initial submission indicated that the beneficiary married in 1984 and was still married to the same person as of the date of filing in 2007.

The petitioner also submitted a program from a 2006 Chanukah concert by the Florida Jewish Philharmonic, presented to raise funds for the petitioner's Education Center. The inside back cover of the program is devoted to discussion of the Education Center, reading, in part:

[The petitioner] is proud of the "life-long learning" that we offer through our adult and student education programs. The Education Center at [the petitioning temple] will be the place where all these educational opportunities will take place.

We are in the midst of creating a pre-school program which will start with the 2007/2008 school year this coming August, 2007. . . .

We offer a one day a week Hebrew School program. It meets on Sunday from 9 to 12:30 for 3 weeks a month, and on Shabbat from 10-12:30 for one week a month. . . .

Our staff is child focused, and our program is individualized for 3 levels. Beginner: grades K-2, Elementary: grades 3-5, and Middle School: grades 6-8. . . . We offer USY and Kadimah programs for the youth, and a new "Hazak" program for our Senior citizens.

The adult education program offers classes, lectures, and other programs to enhance a person's ability to be part of the Jewish community in both religious and social ways. We have classes in Kabbalah twice a week. There is a class in Torah Reading for beginners, as well as a how to learn Hebrew from scratch and be able to participate in a Friday night service. We have conversion classes and adult B'nai Mitzvah programs available. . . .

All of these programs will be enhanced by the renovation and expansion of our Education Center. Thanks to your attendance at the Concert, we will be able to build a playground for the pre-school and make the rooms ready for the start of the programs.

The above discussion indicates that many of the petitioner's educational programs had not yet commenced as of late 2006 when the concert took place. Counsel reinforced this inference by stating: "It is projected that the candidate for the position will spend forty (40) hours per week on performing the duties."

The director denied the petition on July 16, 2007, stating that "the provided evidence and . . . the organization's website [indicate that] the beneficiary did not work the requisite 35 to 40 hours per week" throughout the qualifying period. The director added: "The organization's website indicates that the Hebrew School provided classes from 9:00 a.m. to 1:00 p.m. on Sunday." The director acknowledged that "the beneficiary will be required to work at least 40 hours upon the completion of [the petitioner's] on-site pre-school," but found that prior to that completion the beneficiary's "hours were irregular and based on need."

The reference to the petitioner's web site appears to relate to the "Services" page of the site, which states: "Admission to the Hebrew School is open. Classes run every Sunday from 9:am [sic] to 1:00 p.m."¹

On appeal, [REDACTED] observes that the director did not raise the issue of the petitioner's web site prior to the denial, and claims that the director "misunderstood [the] evidence." He adds: "Certainly, we dictate classes Sunday morning for children under 10 years old. However, we have other group classes during the week for children, teenagers, and adults. Besides, [the] teacher must spend some more hours preparing and planning these said classes and designing learning material; appointing parents for students' follow-up; and, attending religious services."

In a separate statement on appeal, [REDACTED] devotes several pages to a discussion of the beneficiary's work and qualifications, but he never claims that the beneficiary worked full-time throughout the qualifying period, a critical omission considering that the extent of the beneficiary's experience was the sole ground for denial.

Lists submitted on appeal show that the petitioner's Hebrew School conducts seven classes, each instructing between two and six students (29 students in all). An enrollment form identifies an eighth "Post Bar/Bat Mitzvah class" but the petitioner submitted no corresponding student list for that class. The petitioner did not indicate how many of these 29 students are the responsibility of the beneficiary rather than the other three teachers.

An undated "Weekly Calendar" bearing the beneficiary's name shows 35 hours per week (not including Sabbath observances) devoted to such functions as "Special Programs planning," "Hebrew for seniors," and the like. The calendar shows "Hebrew Torah" on Sundays from 9:00 a.m. to 11:00 a.m. and "Hebrew for kids" from 4:00 p.m. to 6:00 p.m. on Wednesdays.

A "New/Prospective Member Information" booklet dated "2007-2008" includes a section headed "Education." This section discusses "one day a week Hebrew School" which "meets every Sunday." The booklet also mentions "Bar/Bat Mitzvah Preparation," but "[t]his program is conducted by the Cantor and the Rabbi," not by the beneficiary. There is also a reference to "[REDACTED]" but little additional information about what this educational program entails. The petitioner has submitted enrollment documents relating to its Hebrew School for children, but no comparable materials establishing an organized educational program for older parishioners.

Whatever the petitioner's current schedule, the record amply demonstrates that the petitioner expanded its educational offerings less than two years before it filed the present petition. Materials dated less than two years prior to the filing date referred to forthcoming, rather than ongoing, educational activities. A copy of a summer 2005 newspaper advertisement submitted on appeal reads, in part: "Jewish Education Ages 6-16+ Sundays only," which is consistent with the director's findings. The petitioner's earlier descriptions of the beneficiary's duties referred only to work with "elementary school children." Therefore, even if the

¹ <http://web.archive.org/web/20070703191336/www.templeholomflorida.org/2.html> shows an archived version of the "Services" page as it existed around the time of the director's decision.

beneficiary currently works full-time for the petitioner, instructing students of all ages, her current schedule cannot be presumed to reflect the schedule in place at the beginning of the qualifying period.

We note, here, the significant increase in the beneficiary's compensation from 2005, when she earned \$18,496.50, to the following year when she earned \$30,230.00. The petitioner has indicated that the beneficiary's employment began in February 2005, in which case she should have received most of a year's pay in 2005. The petitioner has not explained this fluctuation in the beneficiary's compensation; counsel, in response to the request for evidence, pointedly refused to address financial matters prior to 2006. The petitioner has, therefore, abdicated the opportunity to establish that the beneficiary performed, and received payment for, full-time work during the qualifying period.

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.