

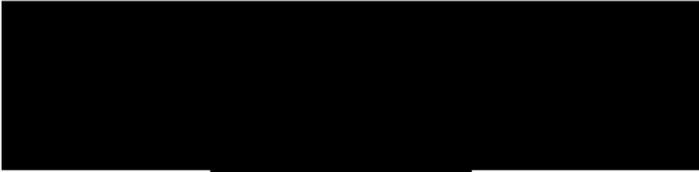
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FILE:

WAC 07 182 53093

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 20 2008**

IN RE:

Petitioner:

Beneficiary:



PETITION: 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 employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a school. 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 teacher. The director determined that the petitioner had not established that the position qualifies as that of a religious worker.

On appeal, counsel asserts that the director “failed to consider the evidence which shows that the God-centered curriculum does combine secular subjects and religious education emphasizing the beliefs, standards and practices of the Seventh-day Adventist religious denomination.” Counsel submits a brief in support of the appeal.

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 issue presented on appeal is whether the petitioner has established that the position qualifies as that of a religious worker.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation, which is defined at 8 C.F.R. § 204.5(m)(2) as follows:

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.

The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Citizenship and Immigration Services (CIS) 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.

According to its stationery, the petitioner is a Seventh-day Adventist Christian high school. In its documentation accompanying the petition, the petitioner did not identify the specific grade or courses that the beneficiary would be expected to teach in the proffered position, but indicated that the position was full time and that the beneficiary would receive an annual salary of \$43,128 in compensation for her services.

In a Notice of Intent to Deny (NOID) dated September 10, 2007, the director noted that a review of the petitioner's website indicated that the beneficiary was employed in the Language Arts Department, and that the endorsements to her teaching certificate are for history, English and French. The director advised the petitioner that the courses taught by the beneficiary appear to be secular in nature and that the petitioner had not established that the beneficiary was employed in a religious position or performing religious duties.

In response, the petitioner submitted a copy of an October 17, 2006, letter written in support of the beneficiary's R-1 nonimmigrant visa, which stated that the petitioner "employs only members of the Seventh-day Adventist Church because in addition to the basic instruction, religious education is an integral part of all aspects of the curriculum. The staff is also expected to model the beliefs and standards of the Church in his/her interactions with students and parents." In that letter, the petitioner stated that the beneficiary was expected to:

- Teach the subjects of English and French according to the Seventh-day Adventist standards and guidelines.
- Instruct using various teaching methods such as lecture, demonstrations, and audio-visual aids.
- Prepare course objectives and outlines for the course of study following established curriculum guides.
- Assign lessons, correct assignments, administer progress evaluations, and keep accurate records and reports.
- Provide daily supervision of students both within the classroom and at after-school activities.

In an October 2, 2007 letter, the petitioner stated that for the 2005-2006 school year, the beneficiary taught British Literature, Research and Composition, Honors World Literature, Honors American Literature, French I and French II. The beneficiary was scheduled to teach the same subjects, with the exception of French I, for

the school year 2006-2007. The director determined that the duties of the position offered to the beneficiary do not relate to a traditional religious function, and therefore denied the petition on November 5, 2007.

Counsel asserts on appeal that the beneficiary is a religious instructor because she teaches in a religious academy. According to counsel, the director “impermissibly attempts to differentiate the Beneficiary’s activities as limited to instruction in secular academic subjects,” and that “[t]he evidence clearly proves that religious instruction in the beliefs, creeds and doctrines of the Seventh-day Adventist denomination is an essential and integral component of all activities and job duties regardless of the course or subject.” Counsel flatly states that “[t]here are no secular classes in any subject at Forest Lake Academy.”

Counsel further states :

The teaching of children in a religious environment is a core religious function of the Seventh-day Adventist religious denomination. In a religious school it is utterly impossible to differentiate or delineate the inculcating of the religious creeds, beliefs and doctrines of the Seventh-day Adventist denomination to the children from the curricular academic subjects.

We acknowledge that there is a pervasive religious purpose underlying parochial schools, which exist primarily as a religious alternative to public schools. Thus, given the nature of religious schools as an alternative to secular public schools, it would be unreasonable to expect the schools to neglect secular subjects required for all students, whatever their faith. Nonetheless, it does not necessarily follow that a teacher of entirely secular subjects would qualify as a religious worker simply because he or she works in an institution administered by a religious organization.

The petitioner’s “Beliefs Statement” includes the following language:

While [the petitioner’s] staff contains many different backgrounds and styles of teaching, they are bound together by one purpose: to demonstrate god’s love to their students. Whether it be through revealing God’s influence in history or His perfection in mathematics, the entire staff shows the many facets of God in their own unique ways. Not only through teaching is this accomplished, but also through the non-teaching staff, from the administrative team under [REDACTED] all the way to the Landscaping director [REDACTED]. The ultimate result of this combination of personalities is something unique that won’t be found anywhere else but at [the petitioning organization].

We acknowledge the sentiment that one’s religious beliefs should infuse and enlighten all of one’s daily activities, but it does not follow that any given activity, whatever its nature, can become a religious activity if performed in the proper spiritual mindset or physical setting. We must consider the beneficiary’s specific duties, rather than the petitioner’s overall religious mission.

The beneficiary’s duties include no instruction in religion. While the teaching standards for literature advise the teacher to chose teaching materials that “encourage the development of students into mature Christians,” they also permit the teacher to “[p]rovide optional acceptable reading to those whose interpretation of the Spirit of Prophecy or Biblical principles differ from those given here.” The petitioner’s documentation does not establish that the beneficiary’s religious duties are more than minimal and are not simply incidental to her teaching duties.

Counsel, citing *Camphill Soltane v. U.S. Dept. of Justice*, 381 F.3d 143 (3<sup>rd</sup> Cir. 2004), states that “[i]t is reversible error to disregard all of the evidence of a substantial, direct and primary religious significance to all of the Beneficiary’s activities in the instruction and education of the students” with the petitioning organization. However, counsel has not established that the director disregarded any of the petitioner’s evidence. The petitioner has submitted no evidence that the beneficiary engages in religious instruction or that any religious requirements occasioned by her job are more than incidental to her teaching.

Counsel asserts further that the fact that the beneficiary has been employed under an R-1 nonimmigrant religious worker visa, also approved by CIS, for the past five years, is evidence that the proffered position is that of a religious worker, and that the Foreign Affairs Manual (FAM) “utilizes the exact same occupation as an example of qualifying work experience.” It must be noted that the FAM is not binding upon CIS. *See Avena v. INS*, 989 F. Supp. 1 (D.D.C. 1997); *Matter of Bosuego*, 17 I&N Dec. 125 (BIA 1979). The FAM provides guidance to employees of the Department of State in carrying out their official duties, such as the adjudication of visa applications abroad. The FAM is not relevant to this proceeding.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6<sup>th</sup> Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO’s authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff’d*, 248 F.3d 1139 (5<sup>th</sup> Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Accordingly, the petitioner’s evidence does not establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

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.