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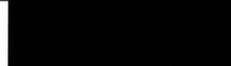
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 21 2008**

WAC 07 016 50683

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.

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 AAO will sustain the appeal and approve the petition.

The petitioner is described as an interdenominational “para-church organization that subscribes to the evangelical Christian doctrinal position.” 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 counselor. 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 several exhibits, including letters from individuals whom the beneficiary has counseled.

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 the director’s decision 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.

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.

Rev. \_\_\_\_\_ Executive Director and Pastor of the petitioning entity, describes the beneficiary’s position:

[The petitioner] recently started a new ministry to help victims of domestic violence and abused women. In partnership with [the] Taiwan-based Garden of Hope Foundation, which has provided faith-based services to abused women and child prostitutes in Taiwan for 20 years, [the petitioner] formed a ministry in New York called Garden of Hope, New York (GOH-NY). The goal of this new ministry opportunity is to provide faith-based counseling services to Chinese-American victims of domestic violence and abused women in the New York City area. Such religious counseling requires the skills of a professionally-trained Christian counselor. . . .

[The beneficiary’s] responsibilities have included: 1) Counseling clients who are victims or survivors of domestic violence and providing them with Christian, faith-based spiritual guidance and emotional support; 2) Advocating for and accompanying clients to various courts to apply for orders of protection; 3) Performing Christian, faith-based, outreach education for the Chinese community regarding the prevention of domestic violence; 4) Providing and/or referring clients to social services for rebuilding their lives; 5) Coordinating and/or providing counseling in Chinese to clients who need emotional and spiritual support for healing from abusive experiences; 6) Networking with similar faith-based service organizations for referrals of clients seeking emergency resources for domestic violence; 7) Conducting community-based research regarding abuse and domestic violence among Chinese immigrant families in the New York City area; and 8) Educating the Chinese-speaking community at large through multimedia presentations as well as a monthly newsletter and informational pamphlets about domestic violence and the faith-based counseling available through [the petitioner].

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to “explain how the duties of the position relate to a traditional religious function.” In response, the petitioner submitted a new letter from Rev. \_\_\_\_\_ which repeated, essentially word-for-word, the claims in the initial letter quoted earlier in this decision. The letter also included a breakdown of the beneficiary’s duties:

Job description	Hour[s] per week
Counseling clients who are victims or survivors of domestic violence through individual, group, and phone counseling.	9.5 hours
Doing paper work, including intake, progress note, discharge, screening process.	5.5
Case management, includes accompanying client to the court, attorney, and other social services as a translator, making referral to other agencies regarding client's legal or immigration issues.	8
Organizing and implementing workshops, forums, and other forms of outreach education in the community or at various local churches	3.5
Crisis intervention: finding resources for clients who are in crisis, such as shelter, suicide intervention, and orders of protection.	3
Spiritual care: pray with or for clients. Help clients to find churches close to them, or connect them with church community.	1.5
Networking: Attending Domestic Violence (DV) task force meetings to combat domestic violence, or community health fair to spread out available help for victims. Visiting other agencies and exploring any chance to collaborate. Introducing our service to other organizations.	2.5
Publicity: Translating domestic violence information from English to Chinese. Writing special DV issue for the newspaper. Making radio program to reach public with DV information.	2.5
Administrative work: including recruiting volunteers, filing, and weekly planning meetings	1
Planning programs for seniors from various churches, such as finding speakers, visiting nursing homes, and attending or leading prayer meetings.	3

On April 18, 2007, the director issued a second RFE, requesting information regarding the petitioner's tax-exempt status and religious denomination, and "documentary evidence to show that the beneficiary's services are needed." The 2007 RFE did not address the question of whether or not the beneficiary's position relates to a traditional religious function within the petitioner's denomination. In response to the 2007 RFE, Rev. stated:

Since [the beneficiary] was hired, she has been assuming her designated responsibilities with outstanding results:

1. Research on the situation of abuse and domestic violence among the Chinese immigrant families in the Metropolitan New York area. Educate the Chinese community at large in such areas through multimedia.

2. Publish a quarterly newsletter in Chinese to supporters, and informational pamphlets in Chinese for the community.
3. Network with similar service organizations for referrals of clients seeking emergency resources for domestic violence.
4. Coordinate and/or provide counseling in Chinese to clients who need emotional or spiritual support for healing from abusive experiences. She has provided about 254 such services.
5. Translate into Chinese for clients who are seeking legal services from the attorneys. She has provided legal assistances for about 164 times.
6. Advocate and accompany clients who are seeking order of protection from various courts.
7. Provide consultations and crisis interventions for clients who experienced domestic violence. She has provided 101 such consultations and about 39 crisis interventions.
8. Provide referrals for clients to social services towards life rebuilding. She has provided about 35 such referrals.
9. Provide clients with spiritual counseling in their native language.

(*Sic.*) Rev. \_\_\_\_\_ in describing the beneficiary's position, stated: "It is our hope that this new ministry will result in further evangelism toward those who are suffering in our society."

The director denied the petition on July 31, 2007, stating:

The beneficiary's duties do not relate to a traditional religious function. The Service notes the importance of the beneficiary's role, but can not help but notice that the majority of the beneficiary's time is dedicated towards social service issues as opposed to religious or theological concerns. . . . In some sense, providing counseling to victims of domestic violence could be considered a ministry. But then again, the petitioner has not shown that the beneficiary is responsible for creating religious content, or that the beneficiary's essential job functions are inherently or predominantly religious. Lastly, it does not follow that a secular or any social worker could not perform the same core functions, or that the position of the Religious Counselor relates in any straightforward way to a traditional religious function.

In this instance, the duties of the occupation do not have religious significance and embody the tenets of that particular religious denomination.

On appeal, counsel observes that the regulatory definition of "religious occupation" at 8 C.F.R. § 204.5(m)(2) lists "religious counselors" among the examples of qualifying occupations. When deciding whether a given occupation qualifies as a religious occupation, the nature of the duties must take precedence over the job title. Otherwise, an alien who performed clearly non-qualifying functions could establish eligibility simply by claiming a qualifying job title from the regulatory list.

In a new letter, Rev. \_\_\_\_\_ states:

The role of Christian Counselor in our organization:

[The petitioner] believes that ultimately it is the Words of God and the faith in Jesus Christ that give hurting people real and sustaining hope and comfort. [The petitioner] also believes that only through Christian care and love, together with Christian community and fellowship, would bring genuine healing to the victims. Therefore, the role of Christian counselor in our organization is to provide faith-based counseling and help the abused victims on their road to recovery through spiritual healings – the acceptance of Jesus Christ and Words of God, so that they would be able to stand on their own feet and regain independence in their lives.

Nature of the job and duties of our Christian counselor:

The Christian counselor is to provide faith-based counseling to people in need of help by leading his/her counselees to study the Bible and scriptures for God's comforting words, pray with them to God for healing, and imbuing the values of our Christian faith either on one-on-one basis or through group sessions. The Christian counselor also works with the counselees with goals of bringing them to the knowledge of God, helping them to establish personal trust and relation with Jesus Christ. The Christian counselor also bears the ultimate goal of helping them to accept Christ as their personal savior and bringing them to our affiliated Evangelical Church or other local churches, so that their faith can be further strengthened with the support of Christian community and fellowship. In so doing, we can bring forth a more long lasting change and improvement in their physical as well as spiritual lives while other non-faith-based counseling would not be able to achieve.

(*Sic.*) The petitioner submits letters from two individuals whom the beneficiary has counseled. [REDACTED] states that she and the beneficiary "spent a lot of times praying together and she helps me to know that God will make a way for me and my son no matter how hard the situation is. She helps me to see things with a Christian value and experience God's love, grace, and mercy."

[REDACTED] states:

I felt warmth, care, and love from [the beneficiary] when I first talked to her for an hour and a half. This kind of love I have never experienced in previous agencies I asked for help. Until lately, I realize that this love comes from God. . . . [The beneficiary] always prays for me that God's protection and guidance will lead me walk through the future ahead of me. She also uses Bible verses to encourage me that God is always with me and will never leave me. . . . When I felt isolated and nobody is there to help me, [the beneficiary] introduces me to the church where I start to attend Sunday service, Sunday school, and prayer meeting. All these give me a lot of support and comfort spiritually. Not only I become a converted Christian, but also decide to baptize in September 30<sup>th</sup> this year.

The above letters support the assertion that the beneficiary's duties overlap those of a secular counselor but, at the same time, involve a significant religious component that would be absent from the work of a secular

counselor or social worker. The presence of secular elements in the duties of a given position does not negate the religious elements present in those duties.

The list of the beneficiary's accomplishments submitted in response to the April 2007 RFE is entirely secular, but this appears to be because the list was intended to enumerate quantifiable achievements, rather than religious experiences which are inherently subjective. The witness letters provided on appeal address the religious aspects of the beneficiary's work. Also, the petitioner's first list of the beneficiary's duties included religious components, as counsel has argued on appeal. Therefore, it is not the case that the petitioner began with a roster of entirely secular duties, and only later inserted religious functions in an effort to persuade the director of the religious nature of the petitioner's work.

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.