



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

C1

[Redacted]

FILE: [Redacted]
SRC 06 190 54064

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 22 2008**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[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
2 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 identified as a church. 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), in order to perform services as a Hispanic Ministry Outreach Liaison Administrator. The director determined that the petitioner had failed to establish that the proffered position qualified as a religious vocation and that the beneficiary had been performing full-time work in the position for the requisite two years immediately preceding the filing date of the petition.

On appeal, counsel for the petitioner organization asserts that the evidence presented, when read in context, weighs heavily in favor of the beneficiary performing primarily religious functions.

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 petition was filed on May 31, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties in the proffered position throughout the two years immediately preceding that date.

The first issue is whether the petitioner has established that the specific position that it is offering qualifies as a religious occupation as defined in the regulations.

The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

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 statute is silent as to what constitutes a "religious occupation," and the regulation states only that it is an activity relating to a traditional religious function. Citizenship and Immigration Services (CIS) interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs 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 or the petitioning religious organization.

At the time the Form I-360 was filed, the petitioner did not provide any evidence regarding the proffered position.

On December 11, 2006, the director issued a Request for Evidence (RFE) and instructed the petitioner to explain how the duties of the proffered position relate to a traditional religious function and list the minimum education, training, and experience necessary to do the proffered position job and submit documentary evidence to show that the beneficiary has met such requirements.

Counsel, in response, submitted a document dated December 10, 2002, from the petitioner, which listed the job title as a part-time Hispanic Outreach Liaison Administrator. The petitioner indicated that the beneficiary will be supervising five volunteer members of the Hispanic ministry and will be administering programs for the Hispanic and Latino congregation and population of the community with the goal to maintain and expand the Spanish language ministry. The petitioner described the duties and responsibilities as follows:

- Train leasers to support Spanish language programs.
- Coordinate and lead a Wednesday evening fellowship group and Bible study.
- Coordinate and participate of the Spanish reading and interpretation in the worship on Sundays.
- Coordinate to provide emergency food, clothes, medicine and bills pay fund to help to all families in need in the congregation.
- Coordinate and teach Spanish classes for American congregation.
- Act as liaison to community agencies on behalf of the Spanish speaking in the congregation.
- Promote participation by the congregation, especially youth, children, and parents as integrant and regular participants in the worship service.
- Support/advocacy and special holiday programs.
- Teach classes that prepare people whose first language is Spanish for baptism, first communion, confirmation, and reception.
- Coordinate Summer Program for children of the community.
- Assist to the Reverend to visitation to the members (especially those who are ill, homebound, or hospitalized).

The petitioner indicated that the candidate must be bilingual or have excellent oral Spanish skills and ability to effectively present information to clergy, lay committee members, and others concerning all aspects of the Church's Hispanic Ministry, and must be available to work during all hours that religious education is in

session and make time available as requires for meeting with volunteers, lay committee meeting and participating of the weekly activities or holiday programs.

Although the petitioner prepared its document on December 10, 2002, in its job offer letter dated February 27, 2007, the petitioner referenced said document, and informed the beneficiary that, “[y]ou will perform your duties in accordance with the job description attached to this letter. Your duties and responsibilities are the same as those you have been performing at Grace Church for approximately three (3) years.”

The petitioner listed the qualifications/education and experience as follows:

Fifth year college or university program certificate specially graduated in Education or Social Work; two to four years related experience and/or training. Culturally sensitive and knowledge of issues about advocacy with Hispanic and Latin immigrants. Experience in teaching catechism and Bible study.

As evidence, the petitioner submitted:

- A letter dated February 21, 2007, from [REDACTED], rector of La Gracia, who indicated that the beneficiary has received the appropriate training (Global Education for a Mission, The Calling to teach and learn, Strategies for Renewal in the Episcopal Church and Manuel to the Alter) in 2003 and 2004 to become a leader of the Episcopal Church in the Diocese in Alabama among the Hispanic Ministry.
- A certificate dated December 15, 2006, from The Alabama Language Institute at Gadsen State Community College, indicating the beneficiary had successfully completed the Intensive English Language Program.
- Several certificates in the Spanish language from the beneficiary’s native country, Peru, along with English translations, reflecting the beneficiary: 1) completed and passed a 24-hour course in Administration and Organization from The Graduate School of Business ESAN in 1997; 2) participated in a twenty-hour Geriatric Update Course in November 1987 and an eight-hour Scientific Refresher Course on Social Work and Mental Health in July 2001; 3) was awarded a Professional Degree of Social Worker on June 24, 1996 from The Rector of the National University of San Marcos and a Graduate Social Worker on December 13, 1996 from The Dean of the College of Social Work of Peru; 4) participated in a seminar on the Project for the Juvenile Code in July 1986 and in a round of conversations on Juvenile Issues in November 1986; and 5) participated in a Catechist training course from January to April 2000 from the Center for Christian Training.

In a separate letter dated February 20, 2007, the petitioner indicated that the beneficiary has been employed part-time, 25 hours a week, receives a compensation of groceries, cleaning supplies, clothes, shoes, and house supplies valued \$200 per week and since November 2005, the beneficiary has been receiving an additional cash payment of \$500.00 each month.

In letters dated March 29, 2006, the rector of the petitioning organization indicated that the beneficiary’s degree in social work enables her to assist with the many outreach programs at the church. In addition, the beneficiary helps the Hispanic immigrant community by directing them to service providers in the community for health and human services needs. The beneficiary aids the rector in counseling individuals and families in need and in helping the rector to hear confessions and provide support to the individuals and families. The beneficiary teaches basic English skills to the Hispanic community and basic Spanish to the

English-speaking community, prepares the Latino members for baptism and confirmations and is a catechist in the church who educates people wanting to know more about the Episcopal Church.

On April 12, 2007, the director issued an additional RFE, which instructed the petitioner to provide evidence that the proffered position is recognized as a religious occupation related to a traditional function in the denomination or organization, including the constitution, bylaws, a letter from a superior or principal of the religious denomination or organization in the United States explaining how the position offered qualifies as a traditional religious function and who has been performing this function in the past.

Counsel, in response, submitted a letter dated May 20, 2007, from the Bishop of the Episcopal Church in the Diocese of Alabama, who indicated the following:

The Episcopal Church in the Diocese of Alabama is committed to ministering to the Hispanic population who reside within the Diocese. It is for that reason the Episcopal Church has established a Hispanic Ministry designed to provide a broad range of religious services to the Hispanic community. The position of Hispanic Ministry Outreach Liaison Administrator is recognized as ministry of Grace Church in the Episcopal Diocese of Alabama.

The religious functions performed by [the beneficiary] include, but are not limited to, religious instruction and translation and religious counseling. Prior to commencing her work with the Hispanic Ministry, [the beneficiary] received specialized training sponsored by the Episcopal Diocese of Alabama.

Counsel provided an additional copy of the document prepared on December 7, 2002, which outlined the job duties and responsibilities of the beneficiary.

In denying the petition, the director concluded that the petitioner had not established the beneficiary's prospective occupation is traditionally a permanent, full-time, salaried occupation within the denomination relating to a traditional religious function.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (Sept. 19, 1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he

was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, counsel argues that the petitioner has shown at least five core functions that are considered to be traditional religious functions pursuant to the regulation in 8 C.F.R. § 204.5(m)(2). Counsel asserts that the letters submitted by the Bishop and the petitioner directly show that the aforementioned activities embody the tenets and practices of the Episcopal faith, and no other.

Upon review of the evidence, the petitioner has established that the proffered position is recognized by its organization as a traditional religious function. Accordingly, the director's finding that the petitioner had not established that the proffered position qualified as a religious vocation is withdrawn.

The second issue is whether the petitioner established that the beneficiary had been continuously employed in a full-time qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation 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.”

The regulation at 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.

In response to the initial RFE, the petitioner provided documentation dated December 10, 2002, and February 20, 2007, indicating that the beneficiary was employed part-time and worked only 25 hours. In response to the second RFE, the petitioner provided an additional copy of the document dated December 10, 2002.

On appeal, counsel asserts that in response to the second RFE, the petitioner provided a job description dated December 7, 2002. Counsel states, “the older job description was provided because it is indicative of the continuous nature of the traditional religious functions to be provided by an employee filling this job.” Counsel states that the letter dated June 14, 2005 from the rector of the petitioning organization speaks of the

growth of membership during the preceding year, and thus, underscores and validates the necessity of full-time employment in the spring of 2004.¹

Counsel submits a letter from the petitioner indicating that the job description dated December of 2002 should have been revised and updated at the time the beneficiary began working “to reflect a minimum of 35 hours per week, because the off-premises traditional religious functions of visitation, prayer and counseling exceeded 10 hour per week.”

Counsel and the petitioner focus on the document dated in December 2002, and state that it should have been updated. However, the fact remains that the petitioner did provide an *updated* letter dated February 20, 2007, which maintained the beneficiary’s part-time employment of 25 hours.

A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Consistent with the requirements of the U.S. Department of Labor’s Bureau of Labor Statistics and other regulations pertaining to employment based visa petitions, CIS holds that employment of less than 35 hours per week is not full-time employment. The petitioner has not established that it will provide permanent full-time employment to the beneficiary. Part-time employment is not a qualifying job offer for the purpose of this employment based visa petition.

The petitioner has not been established that the position is a full-time occupation. The letter of February 20, 2007, clearly indicates that the proffered position is only part-time. As the petitioner has not established that the petitioner was continuously employed on a full-time basis during the two-year qualifying period, the petition may not be approved.

Beyond the decision of the director, is the issue of whether the petitioner is considered a qualifying tax-exempt religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization seeking to employ the beneficiary qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization’s assets and methods of operation and the organization’s papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

As evidence to establish its tax exempt status, the following was provided:

¹ The rector’s letter accompanied a Form I-129 filed on July 13, 2005, and indicated, in pertinent part, “[o]ur Spanish speaking membership has grown steadily during the last year.”

- Two separate letters dated March 29, 2006, and February 21, 2007, from the petitioner stating that it is a tax-exempt institution under section 501(c)(3) of the Internal Revenue Code, listing its tax identification (ID) number as [REDACTED]
- A copy of a letter dated November 24, 2003, from [REDACTED], deputy for finance and administration for The Episcopal Church in the Diocese of Alabama. The letter indicates that The Episcopal Church, including subordinate units, holds a group exemption and that its corporate name is "The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, New York, New York." The letter further indicates that the Society obtained a determination letter from the Internal Revenue Service (IRS) in 1940 and that the IRS reconfirmed its exempt status in 1971 and 2001. Mr. [REDACTED] attached a copy of an IRS letter dated May 10, 2001, which is addressed to "Protestant Episcopal Church in the United States of America, 815 2nd Avenue, New York, NY 10017-4503." The IRS letter confirms the recipient's federal identification number [REDACTED] and group exemption number [REDACTED].

Mr. [REDACTED] indicated that the Episcopal Church operating under the corporate name The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, New York, New York, holds a group exemption covering Grace Episcopal Church, but has not presented sufficient documentation establishing that Grace Episcopal Church is covered under that group exemption. The record is lacking sufficient evidence to establish that the petitioning organization has its own tax exempt status or is recognized as an approved subordinate operating under the umbrella of the Episcopal Church or any other entity. Therefore the petitioner has not established that it is a bona fide nonprofit religious organization. This decision constitutes an additional ground for dismissal of the appeal.

The AAO maintains plenary power to review each appeal and certification on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.