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U.S. Citizenship
and Immigration
Services

CI

[Redacted]

FILE: [Redacted]
WAC 07 016 51448

Office: CALIFORNIA SERVICE CENTER

Date: OCT 30 2008

IN RE: Petitioner:
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
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's decision is based on a standard not found in precedent decisions and that the standard "would eliminate most traditional religious occupations." Counsel submits a brief and additional documentation 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 on appeal is whether the petitioner has established that the position qualifies as that of a religious worker.

The petitioner is a school associated with the Roman Catholic Church. In its October 10, 2006 letter accompanying the petition, the petitioner stated it has employed the beneficiary full time as a third grade teacher since October 2004. The petitioner stated that during that time, the beneficiary has taught religion, Spanish, science and computer technology for third grade students. The petitioner further stated that the beneficiary "handles" other religious activities, including religious retreats, weekly Mass preparation and attendance, "and is responsible in all her teaching activities for adherence to the teachings of the Roman Catholic Church."

The petitioner submitted a copy of its contract with the beneficiary for the school year 2006-2007. The contract advises the teacher “that the school is operated in accordance with teachings of the Roman Catholic Church and Catholic educational philosophy,” and that “compliance with the practices and regulations as outlined in the [petitioner’s] Personnel Handbook, the Diocesan Handbook of School Policies for the Diocese of Brownsville . . . the Texas Catholic Conference Education Department, and Administrative directives is required.”

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.

In response to the director’s request for evidence (RFE) dated December 11, 2006, the petitioner provided a “[d]aily schedule for [the beneficiary] and her third grade classroom.” The schedule reveals the following:

7:45-8:00	Prayer/Homeroom
8:00-8:30	Religion
8:30-9:30	Reading
9:30-10:00	Language Arts
10:00-10:30	Integrated Studies
10:30-11:00	Physical Education
11:00-11:45	Mathematics
11:45-12:00	Change Class
12:00-12:30	Student Lunch
12:30-1:30	Reading
1:30-2:00	Language Arts
2:00-2:45	Mathematics
2:45-3:15	Integrated Studies
3:15-3:30	Dismissal

The petitioner also submitted a copy of a November 2006 Catholic School Catechist Certificate from the Diocese of Brownsville, certifying the beneficiary as a “qualified Catholic School Catechist for Grades PK –

8.” The petitioner also provided copies of certificates issued to the beneficiary under the “Religion Certification Program for Catholic School Teachers.” These included certificates in catechesis, New Testament, Old Testament, Vatican II, morality, prayer and spirituality, social justice teaching of the church, church history and church doctrine. All of these certificates were issued in 2005 and 2006.

The director noted that the record “illustrates that the beneficiary is only spending approximately one hour a day, less than ten percent of her daily duties performing teaching tasks that are related to a traditional religious function.” The director therefore denied the petition on May 1, 2007, finding that the petitioner had not established that the duties of the position related to a traditional religious function.

Counsel asserts on appeal that the director’s conclusion that the proffered position does not qualify as a religious occupation because the religious content of the position amounts to less than ten percent of the beneficiary’s duties applies a standard “which would eliminate most traditional religious occupations.” However, the director’s determination was based on the facts as presented on the record. Her observation of the amount of time the beneficiary is engaged in religious work was merely a comment on the facts and does not purport to set a standard for determining whether a position qualifies as that of a religious occupation.

Counsel also argues that the court in *Camphill Soltane v. DOJ*, 381 F.3d 143 (3rd Cir. 2004) “interpreted the regulation to mean that a qualifying job offer must only have ‘some religious significance.’” First, according to the record of proceeding, the beneficiary’s intended place of work is in Texas, which is not under the jurisdiction of the Third Circuit Court of Appeals. Therefore, *Camphill Soltane* was never a binding precedent for this proceeding. Additionally, in *Camphill Soltane* the court purports to cite from “the commentary accompanying [8 C.F.R.] § 204.5(m)(2)” as a basis for its determination that a job may qualify if it has some religious significance, because legacy Immigration and Naturalization Service (INS) determined that “[i]f [a] job has no religious significance” it would not qualify. 56 Fed. Reg. 66695, 66966 (Dec. 27, 1991). In fact, that Federal Register publication is a final rule establishing definitions and evidentiary requirements for R-1 nonimmigrant religious workers in accordance with section 101(a)(15)(R) of the Act. It is unclear why the court cited to this regulation in *Camphill Soltane*, as the reasoning behind the implementing regulation for a separate *nonimmigrant* visa classification cannot be used to establish agency reasoning for the *immigrant* classification under consideration.

Counsel also asserts that “there is a minor misunderstanding related to the daily teaching schedule of the beneficiary,” and that the schedule previously submitted “shows the daily schedule for the students assigned to her class.” The petitioner submits another schedule as follows:

7:45 – 8:30	Religion
8:30 – 9:30	Reading
9:30 – 10:00	Language Arts
10:00 – 10:30	Integrated Studies
12:30 [sic] – 11:00	Planning Time/Liturgy Preparation
11:45 – 12:00	Change Class
12:00 – 12:30	Lunch
12:30 – 1:30	Reading
1:30 – 2:00	Language Arts

2:00 – 2:45	Mathematics
2:45 – 3:15	Integrated Studies
3:15 – 3:30	Classroom Dismissal
3:30 – 4:00	Planning Time

Counsel argues that the “evidence of record establishes that the teacher is also required to adhere to the teachings of the religious denomination while teaching subjects other than ‘religion.’” The “Catholic Schools Teacher Contract” has one clause with respect to this issue:

10. Teacher understands that the school is operated in accordance with teachings of the Roman Catholic Church and Catholic educational philosophy. The Teacher further understands that the Oratory Schools follows the spiritual model of its patron, [REDACTED], and that it is an institution of Pontifical Right. The Teacher understands that the Oratory Schools are accredited by the Texas Catholic Conference Education Department and that compliance with the practices and regulations as outlined in the Oratory Schools Personnel Handbook, the Diocesan Handbook of School Policies for the Diocese of Brownsville only those adopted and or revised by the Oratory Schools), the Texas Catholic Conference Education Department, and Administrative directives is required.

However, merely affirming that one “understands” that the school is operated in accordance with the teachings of the Church and complying with the practices and regulations regarding school policies and, as required by the contract, does not by itself establish that a teacher is required to adhere to the religious tenets of the denomination. The contract in the record does not indicate that adherence to the Catholic faith is a requirement for a teaching position, only an acknowledgement that the school is operated in accordance with the teachings of the Catholic Church. While the petitioner states in its letters of January 16, 2006 and October 10, 2006, that the beneficiary is member of the Roman Catholic denomination, the petitioner has not established that only those of the Catholic faith are qualified to teach third grade subjects for the petitioning organization. If the school hires non-Catholics for its teaching positions, then those individuals would presumably sign the same contract; however, this would not make those individuals religious workers for purposes of this visa classification. If the petitioner will even *consider* non-Catholic applicants for the teaching positions, the question immediately and inevitably arises as to why Catholic teachers should receive an immigration benefit but non-Catholic teachers should not.

Furthermore, the beneficiary’s certificates in catechesis, New Testament, Old Testament, Vatican II, morality, prayer and spirituality, social justice teaching of the church, church history and church doctrine are all dated after she began her work for the petitioner. There is no evidence in the record to reflect that the courses completed by the beneficiary were necessary, or used, by the beneficiary in her job. The religious aspects of the proffered job have not been established to be an integral part of the duties of a third grade teacher or of the religious character of the petitioning school.

Counsel further asserts:

Because the Petitioner is a faith based elementary school organized into self-contained classrooms with an assigned classroom teacher who teaches all subjects with the exception of special equipment subjects such as physical education and music, the Petitioner

qualifies all classroom teachers as religious catechists. This manor [sic] of organizing Catholic elementary schools and the resulting requirement that all classroom teachers in Catholic elementary schools become qualified catechists is a traditional and universal requirement of the church.

The evidence of record does not support counsel's assertions. The petitioner submitted no evidence that the Catholic Church requires all elementary school teachers to be qualified as catechists or that each teacher, including the applicant, is involved in catechism. Further, the petitioner stated that it had employed the beneficiary as a third grade teacher since 2004; however, the record indicates that she only became a certified catechist for elementary grades in November 2006. Thus the record does not support that this is a religious requirement of the beneficiary's job as a third grade teacher. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence submitted by the petitioner is therefore insufficient to establish that the proffered position qualifies as that of a religious worker as defined by 8 C.F.R. § 204.5(m)(2).

Beyond the decision of the director, the petitioner has not established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

As evidence of its job offer, the petitioner submitted a copy of the contract it entered into with the beneficiary on August 16, 2006 for the 2006-2007 school year. The contract provides, "The Teacher understands that this contract is only for the term specified herein, and does not give to the Teacher any right to continue employment for future school years or terms."

The petitioner has not extended an offer of permanent employment to the beneficiary. Based on the temporary nature of the proffered position, the petitioner's offer of employment to the beneficiary does not meet the requirements for this preference based immigrant visa petition. The petitioner's documentation does not clearly establish that the beneficiary will not be solely dependent on supplemental employment or the solicitation of funds for support. Accordingly, the petitioner has not established that it has extended a qualifying job offer to the beneficiary.

The AAO maintains plenary power to review each appeal 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.