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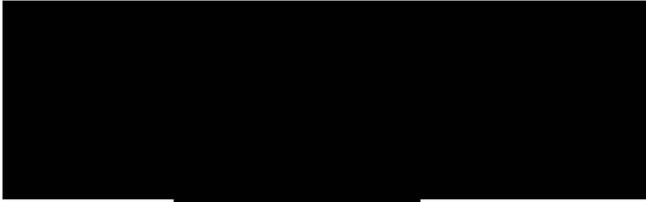
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **SEP 09 2008**

WAC 06 259 50932

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.

  
7 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 withdraw the director's decision and remand the petition for further action and consideration.

The petitioner is a local affiliate of Youth With A Mission (YWAM), an international, interdenominational evangelical Christian missionary organization. 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 missionary. The director determined that, because the petitioner does not pay the beneficiary a salary, the petitioner had not established that it had made a qualifying job offer to the beneficiary, that the beneficiary had the requisite two years of continuous work experience as a missionary immediately preceding the filing date of the petition, or that the proffered position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel, letters, and other exhibits.

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).

## JOB OFFER

Review of the director's decision shows that most of the grounds for denial arise from the terms of compensation. **We therefore begin by considering those terms.** Pursuant to regulations at 8 C.F.R. § 204.5(m)(4), an authorized official of the religious organization in the United States must state how the will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work.

The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In an August 14, 2006 letter that accompanied the initial filing of the petition, [REDACTED], Administrator of the petitioning organization, stated that the petitioner “provides [the beneficiary’s] food and housing, worth approximately \$800/month (\$9,600/year) and [the beneficiary’s] W-2 shows an additional income of \$760.” The record contains a copy of an Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement, showing that the petitioner paid the beneficiary \$760 in wages in 2005.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to clarify “the terms of payment for services or other remuneration.” In response, the petitioner submitted copies of “Missions Giving Reports” in the beneficiary’s name, reflecting donations from various individuals and another YWAM affiliate in Point Roberts, Washington. The reports indicate that the beneficiary does not directly receive donations; rather, the petitioner processes the donations, keeping a \$5.00 “Service Charge” from each donation earmarked for the beneficiary’s support.

The director issued a second RFE on April 17, 2007, again requesting a detailed description of the beneficiary’s position and the terms of compensation. In response, the petitioner submitted various documents, including a promotional flier that indicates that “no one in YWAM receives a salary.” In a letter dated June 4, 2007, [REDACTED] stated:

As [the petitioner] requires all staff to raise their own support, [the beneficiary] does not receive remuneration for her work. Rather, she receives a regular, committed income from her supporters in Northern Ireland, as well as the United States. Donations in the United States are given through our Accounting Department and are reflected in [the beneficiary’s] Missions Giving Reports as well as her personal bank statements. Since [the petitioner] is a religious order, we require [the beneficiary] to live in community on our campus in order to facilitate her work here. We provide all her food and housing, worth approximately \$800/month.

(Evidentiary citation omitted.) [REDACTED], the petitioner’s Director of Communications, asserted that the petitioner “does not pay staff directly but requires workers to secure financial support. . . . Please note that [the petitioner] provides [the beneficiary’s] food and housing, worth approximately \$800/month.”

The director denied the petition on September 5, 2007, based in part on the finding that “[t]he petitioner has not established that they have extended a valid job offer for permanent full-time remunerated employment.”

On appeal, counsel states: “in promulgating the final rules at issue, the agency explicitly stated that they had been ‘revised to account more clearly for *uncompensated* volunteers, whose services are engaged but who are not technically employees.’ 56 Fed. Reg. 66965 (Dec. 27, 1991) (emphasis added).” This argument fails to persuade, because the cited passage from the Federal Register pertains only to R-1 nonimmigrant religious workers. There is no parallel clause pertaining to special immigrant religious workers, the final rule relating to which appeared (with accompanying commentary) at 56 Fed. Reg. 60897, November 29, 1991.

More persuasively, counsel argues that the beneficiary “receives remuneration in the form of board, room, and incidental expenses.” [REDACTED] reaffirms this arrangement in a new letter dated September 21, 2007, stating that the beneficiary “does not require [donated] funds for her day-to-day living expenses since they are completely covered by” the petitioning entity.

The above arguments are consistent with binding precedent. The Board of Immigration Appeals ruled that an alien who “receives compensation in return for his efforts on behalf of the Church” is “employed” for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

8 C.F.R. § 204.5(m)(4) clearly indicates that an alien who relies solely on solicitation of funds for support does not have a qualifying job offer. Such does not, however, appear to be the case in this proceeding. The record indicates that the beneficiary has secured pledges of support from various sources, but these pledges do not appear to be the beneficiary’s sole or primary means of support. Rather, such support is supplementary and, it appears, incidental. If there were evidence that the beneficiary herself is responsible for soliciting the funds that pay for her own food and lodging, such evidence would form a strong basis for denial of the petition, but the record contains no such evidence at this time.

For the above reasons, the AAO withdraws the director’s finding that the petitioner’s offer of room and board in lieu of a cash salary is not a qualifying job offer.

## TWO YEARS OF EXPERIENCE

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 August 23, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missionary throughout the two years immediately prior to that date.

in his August 14, 2006 introductory letter, stated that the beneficiary “has been a full-time missionary since October 2001.” The initial submission contained no documentation of the beneficiary’s past work except for copies of R-1 nonimmigrant religious worker visas in her passport.

The director, in the 2006 RFE, instructed the petitioner to submit “evidence of the beneficiary’s work history for the years 2004, 2005 and 2006,” including “evidence that shows monetary payment” and “evidence to show how the beneficiary supported herself” during periods of unpaid volunteer work.

In response, the petitioner submitted a copy of the beneficiary’s 2005 income tax return, on which the beneficiary reported \$760 in wages, consistent with the IRS Form W-2 submitted earlier. On the tax return,

the beneficiary identified her occupation as “Religious Order Member” and claimed a tax credit as “Clergy.” The petitioner also submitted copies of “Missions Giving Reports,” described elsewhere in this decision.

The petitioner also submitted documentation showing that the beneficiary owns a stock portfolio and rental property in the United Kingdom. The beneficiary’s bank statements from 2004 through early 2007 generally showed that the beneficiary had between \$2,500 and \$4,000 in two separate accounts in Texas, and smaller amounts in British accounts. The beneficiary also invested £30,000 in a “Capital Investment Bond” (apparently analogous to a mutual fund) in May 2006, shortly before the filing of the petition. Bank documents also indicate that the beneficiary holds a mortgage in the United Kingdom, the term of which extends to late 2017.

In the second RFE, the director repeated the request for the beneficiary’s employment history and means of support during the 2004-2006 qualifying period. In response, counsel stated: “From August 23, 2004 to August 23, 2006, [the beneficiary] was employed as [the petitioner’s] Senior Editor in the Communications Department.” Counsel stated that the beneficiary did not receive IRS Forms W-2 in 2004 or 2006. The petitioner did not explain why the beneficiary did receive a Form W-2 for 2005. The petitioner submitted additional documentation regarding the beneficiary’s investments.

, in his June 4, 2007 letter, stated that the beneficiary “has been a full-time missionary since October 5, 2001 with [the petitioner].” A “Receivables Management” report shows the beneficiary’s involvement with the petitioner dating back to late 2001, although, because the beneficiary is unsalaried, the report itself offers little information about the extent of that involvement.

The director, in the denial notice, found that “[t]he petitioner has not submitted sufficient evidence to prove the beneficiary has been employed and remunerated on a full-time basis in the proffered position throughout the two year qualifying period.” The lack of a salary was a fundamental basis for the finding that the petitioner did not employ the beneficiary throughout the qualifying period. The AAO has already found, above, that the beneficiary’s food and lodging amount to compensation for services performed. The AAO’s finding leaves no substantive basis for the director’s finding regarding the beneficiary’s experience. The director does not appear to have disputed that the work took place, only that such work amounted to employment. The AAO therefore withdraws the director’s finding that the beneficiary lacks the necessary experience.

## RELIGIOUS OCCUPATION

The final issue 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.

In his August 14, 2006 letter, [REDACTED] stated:

[The beneficiary] serves in one of the most traditional of religious activities – that of missionary. . . . Her compassion, coupled with her skills in trauma management, bring comfort and practical help to people in crisis. Moreover, these skills are extremely helpful for her role in the pastoral counseling of those attending our missions training programs. In addition, she is the senior editor in our Communications Department.

According to the beneficiary's résumé, her current titles include: "Outreach Leader, Training Schools"; "Worship Leader, Training Schools"; "Senior Editor, Communications Department"; "Pastoral Care Leader, Training Schools" and "Mercy Reservist." The initial submission contained little other information about the beneficiary's position.

In the 2006 RFE, the director requested "a **detailed description** of the work to be done, including specific job duties," and an explanation as to "how the duties of the position relate to a traditional religious function" (emphasis in original). The petitioner's response included no further information about the nature of the beneficiary's work.

- In the 2007 RFE, the director repeated the above requests and instructed the petitioner to explain how the beneficiary's position qualifies as a religious occupation. In response to the second RFE, counsel stated: "in addition to [the beneficiary's] administrative duties in the Communications Department, she participates in leading prayer and worship meetings during the week, and counseling students during their discipleship training."

[REDACTED] stated that the beneficiary's "role [as Senior Editor] is vital to our ministry since we are continually producing and updating literature, videos, and website material, chiefly for the purposes of evangelism (spreading the gospel) but also to highlight the various training programs and events offered by our ministry to mobilize young people for missions."

[REDACTED] listed the beneficiary's editorial duties, including "Editing/developing the production of material for the organization," "Developing fundraising tools to raise capital funds for the organization's projects," and "Developing and editing evangelism tools and promotional materials used by all our training programs to fulfill the mission and mandate of [the petitioning organization], namely to train others to know God and make Him known." A detailed schedule of a "Typical Work Week" indicates that the beneficiary performs the above editorial functions, "[t]utors foreign students in reading English" and "[l]eads worship with training school," consistent with the beneficiary's résumé. The schedule also indicates that the beneficiary's editorial duties include writing materials such as "video scripts" and "Focus articles," indicating that the beneficiary has a role in creating, not merely organizing or presenting, the content of the petitioner's communications.

Copies of sample publications confirm the beneficiary's role as a writer and editor of publications regarding religious topics.

In denying the petition, the director concluded that "[t]he beneficiary's duties do not appear to relate to a traditional religious function." On appeal, counsel asserts: "A religious occupation does not have to exclude all secular functions in order to fall within the scope of the regulatory definition." Counsel also argues that the production of religious literature is inherently religious in nature and relates to a traditional religious function.

█ in his latest letter, states that the beneficiary's "proffered position of Senior Editor is directly connected with training, evangelism, and mercy ministry, although I must emphasize that her duties do not limit her to the publication of our literature." █ also observes that there are incidental logistical duties that are simply unavoidable given the size of the organization.

The materials in the record consistently support the petitioner's claims that the beneficiary is a missionary, who, through her actions, seeks to propagate the tenets of the petitioner's Christian faith. The director's contrary finding appears to rest on a selective reading of the beneficiary's duties, to include only the most technical or administrative elements. While it is certainly true that not everyone involved in the production of religious literature is necessarily engaged in a religious occupation, the beneficiary is responsible for shaping, and in some cases creating, the largely if not exclusively religious content of the petitioner's publications.

Moreover, the director appears to have overlooked other elements of the beneficiary's work beyond her editorial functions. The petitioner had already claimed these elements prior to the denial, but provides additional details on appeal. █ of MercyWorks, an organization within the petitioning entity, states:

[The beneficiary] is an integral part of our international response team that travels all over the world to bring help to people in crisis, primarily as a result of natural disasters.

[The beneficiary] has been involved in several of these trips, most recently Sri Lanka, where she was part of our rapid response team that was mobilized after the tsunami. As we carry out our relief operations, [the beneficiary] is called upon to fulfill the responsibilities of a Christian missionary in praying for and counseling the sick, teaching from the Bible, leading prayer times for those we are seeking to help, and leading worship services for our teams and for those we are serving.

█ the petitioner's Director of Training Schools, describes the beneficiary's roles within that department:

As a small group coordinator, her main function is to coach students "one-on-one" and to oversee their individual training. . . .

As a small group leader [the beneficiary] and usually one other staff member meet[] with a group of students on a weekly basis. As a leader, she seeks God for guidance on what should be addressed each particular week. . . . In summary, the role of the small group leader is to point the students to God and to lead by example. . . .

[The beneficiary] is also a gifted worship leader for our training schools, playing guitar and singing. . . .

[The beneficiary's] third role with training schools is as an outreach leader. As part of our curriculum, students undertake a missions trip. . . . [The beneficiary] has communicated vital relational principles internationally, and shared the Good News with many people.

In sum, the evidence provided by the petitioner supports a finding that the beneficiary's work is essentially a religious occupation relating to a traditional religious function. The AAO withdraws the director's contrary finding in this regard.

The petitioner has overcome the grounds for denial stated in the director's decision, and the AAO's appellate review of the record has revealed no new grounds for denial. Pursuant to a memorandum from Michael Aytes, Associate Director, Domestic Operations, and Louis D. Crocetti, Jr., Division Chief, Office of Fraud Detection and National Security, *Standard Operating Procedures for Religious Worker Petition Anti-Fraud Enhancements* (July 5, 2006), the petition is remanded for additional processing. If routine checks and any necessary follow-up reveal no new basis for denial, the director is instructed to approve the petition. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.