



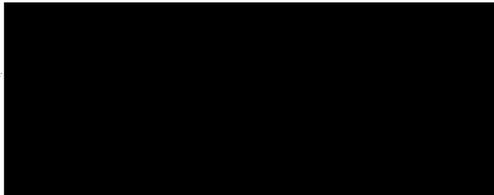
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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536

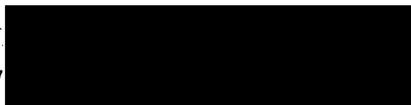
Public Copy



File: WAC-98-248-50007 Office: California Service Center

Date: JUL 16 2001

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)

IN BEHALF OF PETITIONER:



identifying information should be redacted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as a Judaic temple. It seeks classification of 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 employ her as a teacher in its Hebrew school.

The director denied the petition determining that the petitioner failed to establish that the beneficiary had had the requisite two years of experience in a qualifying religious occupation.

On appeal, counsel for the petitioner asserted that the director's request for evidence was misleading and that they are now submitting evidence of the beneficiary's employment during the qualifying period.

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, 2003, 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, 2003, 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 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).

At issue is whether the petitioner has established that the beneficiary's past employment satisfies the requirement of having had two years of experience in a religious occupation.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

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(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

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.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of 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 petition was filed on September 17, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious occupation at least since September 17, 1996.

As noted by counsel, the director's decision relied, in part, on a statement regarding the beneficiary's voluntary work with the petitioner subsequent to the filing of the petition. On appeal, counsel submits an employment verification letter from the Israeli Ministry of Education stating that the beneficiary "taught Biblical and Jewish History through Art in both comprehensive and academic high schools" from 1978 to 1998.

In order to establish eligibility for special immigrant classification, the petitioner must establish that the alien beneficiary will be employed by a qualifying religious organization as defined in these proceedings. 8 C.F.R. 204.5(m)(3). In this case, it must be concluded that teaching religious history through art in a public high school does not constitute prior experience in a religious occupation within the meaning of section 203(b)(5) of the Act. The beneficiary was employed by a secular organization and taught religious history as an academic subject. The Service is not persuaded that this experience rises to the level of a religious instructor for a religious organization as contemplated at 8 C.F.R. 204.5(m)(2).

Beyond the decision of the director, the record does not establish that the Hebrew school affiliated with the temple at which the beneficiary would be employed is a qualifying religious organization for the purposes of these proceedings. A teaching position at a parochial school is not considered employment with a qualifying religious organization under 8 C.F.R. 204.5(m)(3), even though the school is affiliated with a church, temple, or mosque.

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.

**ORDER:** The appeal is dismissed.