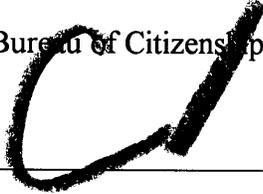


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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**Identifying data deleted to
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invasion of personal privacy**



ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File:  Office: VERMONT SERVICE CENTER

Date:

AUG 15 2005

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 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is described as “a wholly-owned subsidiary of the [REDACTED] an arm of the [REDACTED]. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a literature evangelist. The director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, counsel argues that the beneficiary’s occupation is a qualifying religious occupation requiring specialized training.

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).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an 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)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state how the alien will be solely carrying on the religious vocation and describe the terms of payment for services or other remuneration.

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 statute is silent on what constitutes a “religious occupation” and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term “traditional religious function” and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service 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 specific prescribed religious training or theological education is required, 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.

the petitioner’s director of human resources, describes the beneficiary’s occupation:

The [redacted] employs literature evangelists whose purpose is religious outreach. These persons work for the publishing houses as religious outreach workers to carry the values and beliefs of the church to the public. Their responsibilities include sharing the Good News of Jesus Christ as a personal Savior, disseminating religious literature in a house-to-house lay ministry, making available for purchase religious books and literature, praying with individuals and families, providing the first contact with the public, establishing a framework for follow-up visits by clergy, and identifying those souls in need of and willing to receive additional spiritual counseling. . . .

A successful and soul-winning literature evangelist requires most importantly a knowledge of and dedication in both word and practice to the liturgy and doctrines of

the [REDACTED] In addition, the literature evangelist must be able to convey the beliefs of the Church enthusiastically and with conviction, and to effectively communicate. [The beneficiary] fills all of these requirements, and his years of work experience for the [REDACTED] has [sic] demonstrated that he has the necessary conviction and dedication to fulfill this important responsibility.

The director requested "evidence that the beneficiary's primary duties . . . require specific religious training beyond that of a dedicated and caring member of the congregation or body. The evidence must establish that the job duties are traditional religious functions above those performed routinely by other members."

In response [REDACTED] asserts that the beneficiary's position constitutes "a Religious Vocation and Occupation as defined by the Immigration and Naturalization Service," and that "the position of Literature Evangelist is equal to that of a Minister of a Church." [REDACTED] quotes the writings of Sister Ellen G. White, founder of the Seventh-day Adventist Church, who stated that the "canvasser . . . occupies a position equal to that of the gospel minister."

While the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The relevant regulations offer three separate and mutually exclusive definitions for "minister," "religious vocation" and "religious occupation." Therefore, the petitioner's claim that the beneficiary's occupation fits all three definitions cannot be correct. The definitions, as set forth at 8 C.F.R. § 204.5(m)(2), follow:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

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.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

had previously described the beneficiary's work as a "lay ministry." Because the regulatory definition of "minister" specifically excludes "lay preachers," we cannot place literature evangelists within the definition of a minister. The record does not indicate that the beneficiary is authorized to perform all the functions of ordained clergy, such as officiating at weddings. While the petitioner indicates that the beneficiary "has the authority to prepare and recommend individuals for baptism," there is no indication that he is authorized to actually perform the baptisms.

states that literature evangelists require "extensive training." church policies which establish that a "regular literature evangelist" works "40 hours per week." adds that the beneficiary is a "credentialed literature evangelist," which "is the highest designation that a Literature Evangelist can achieve." Other policies indicate that some literature evangelists are to be considered independent contractors rather than church employees.

The petitioner submits copies of several training and participation certificates, none of which expressly refer to religious subjects. Instead, the subjects are "Health & Nutrition, Sales Instruction and Finances," "Training Seminar Meeting," and "Family Life & Finances Seminar." An older certificate recognizes the beneficiary's "Missionary Work."

Regarding the beneficiary's remuneration, "[b]ased upon his prior performance, he is expected to earn a minimum of \$350.00 per week." does not explain the apparent uncertainty regarding the beneficiary's earnings. The record contains several "Monthly Reports," on which the beneficiary has reported his hours worked, and other information such as "presentation," "orders" and "delivery." From this information, it appears that the beneficiary sells the petitioner's literature on a commission basis. This would explain the careful tracking of the beneficiary's sales activity, as well as the petitioner's evident inability to cite an exact salary that the beneficiary would receive. Selling books door-to-door is not a religious occupation, even if the books being sold happen to have a religious theme. Even then, it is far from clear that the books are primarily religious in nature. The petitioner's name and the recent certificates issued to the beneficiary all suggest that the predominant theme of the literature is health.

Furthermore, the sales of these materials would appear to constitute, in essence, fund-raising on behalf of the . Fund-raising is, by regulation, excluded from the definition of a religious occupation. The petitioner has, in various ways, attempted to minimize the emphasis on book sales. Once we disregard the distribution of literature, however, the beneficiary has no other clearly defined duties, only vaguely-described injunctions to spread the Gospel and to seek out souls for the church.

The director denied the petition, stating:

On review, it must be concluded that the evidence of record is insufficient to establish that the beneficiary is a qualified Literature Evangelist. First, the petitioner has not explained the standards required to be recognized as a Literature Evangelist in the denomination or shown that the beneficiary has satisfied such standard.

Second, you did not submit a letter from an authorized official of the denomination verifying the denomination[’s] recognition of [the beneficiary’s] credentials as Literature Evangelist. The submission of a statement from an official of the individual church, and a statement from an official of another local affiliated church, cannot be accorded the necessary evidentiary weight to establish eligibility.

The director also stated that a certificate of ordination “not based on theological training or education” is not sufficient to establish that the beneficiary qualifies as “a minister for the purpose of special immigrant classification.” Therefore, the director concluded, “[t]he record does not establish that the beneficiary has been and will be employed in a religious occupation.”

On appeal, counsel maintains that “the position of Literature Evangelist . . . is within the definition of ‘Minister’ and Religious Occupation as defined by the Act.” The Act itself does not define those terms. The regulation at 8 C.F.R. § 204.5(m)(2) does contain definitions which, as we have noted, are mutually exclusive. The regulatory definition of “minister” specifically excludes “lay preachers.” Counsel states that the beneficiary’s duties are beyond the capabilities of the laity, but the petitioner had earlier described the beneficiary’s work as a “lay ministry.”

Counsel asserts that the position “requires special training and education,” but counsel does not specify what that training is. Counsel cites “various certificates” issued by the church, but these certificates were all issued several years after the beneficiary began his work as a literature evangelist. Furthermore, these certificates reflect training in health, sales, and finance, all of which are decidedly secular topics. The record is entirely silent as to what training the beneficiary had already completed before his first day as a literature evangelist. Training undertaken after years of such work cannot reasonably be considered a “prerequisite” for the occupation.

We note that, according to materials in the record, literature evangelists are expected to work 40 hours a week for ten months, accumulating a total of 1,680 hours per year. This figure annualizes to an average of only 32 hours per week. The record does not indicate what is expected of literature evangelists for the other two months out of every year, nor is there any indication that those two months represent paid vacation time.

For the reasons outlined above, the petitioner has not persuasively demonstrated that the beneficiary’s work amounts to a qualifying religious occupation, rather than a sales-based occupation for a health education publishing company owned by a church.

Counsel maintains that the beneficiary’s “position does not include fund raising,” but the petitioner’s earlier description of the beneficiary’s work as a “house-to-house lay ministry, making

available for purchase religious books and literature,” suggests that fund raising (via the sale of books) is actually a major component of the beneficiary’s duties.

Another issue arises from review of the petitioner’s documents. Regulations at 8 C.F.R. § 204.5(m)(3)(i) require the petitioner to submit evidence that the organization 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.

The petitioner must either provide verification of the church’s individual exemption from the U.S. Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

With the initial filing, the petitioner submitted documentation establishing the qualifying tax-exempt status of the Seventh-day Adventist Church. In response to a request for evidence that the petitioning entity itself has such a tax exemption, the petitioner has submitted further copies of these same letters.

An audited financial statement in the record indicates that [REDACTED] Inc., which does business as the petitioning entity, “is a not-for-profit corporation that is a wholly-owned subsidiary of the [REDACTED] which in turn “is organized as a general not-for-profit corporation under the laws of the District of Columbia and the State of Maryland.” The financial statement states “[t]h [REDACTED] is a religious not-for-profit organization and is exempt from Federal, State and local Income Taxes under the provisions of Section 501(c)(3) of the Internal Revenue Code, and corresponding section[s] of applicable state and local codes, except for taxes on Unrelated Business Income as described in section[s] 511-514 of the Internal Revenue Code.” The petitioner has not submitted documentation from the Internal Revenue Service to show the status of Autumn House Publishing Company (i.e., the petitioner itself rather than any parent entity).

On appeal, counsel maintains that the petitioner “is exempt from taxation as described in Section 501(c)(3) of the Internal Revenue Code.” Counsel asserts that the petitioner has already provided evidence of this tax-exempt status, but the letters that the petitioner has repeatedly submitted

merely show that the [REDACTED] is a tax-exempt nonprofit organization. Despite specific requests by the director, the petitioner has submitted nothing to show that the petitioner, a corporation in its own right, has such an exemption. We note that section 501(c)(3) of the Internal Revenue Code of 1986 designates several different types of tax-exempt nonprofit organizations, not all of which are religious in nature. For example, an entity classified as primarily educational may be exempt from taxation but it is not a religious organization. For this reason, the regulations repeatedly require evidence not only of tax-exempt status, but of such status "as it relates to religious organizations." This issue is especially relevant if the petitioner, as its name implies, primarily engages in health education.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.