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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street NW  
Washington, DC 20536

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

DEC 23 2003

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 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 Citizenship and Immigration Services (CIS) 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.

*Cindy M. Gomez for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a church. 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 marketing coordinator.

The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition. The director also determined that the petitioner had not shown that the proffered position qualified as that of a religious worker.

On appeal, counsel submits a brief and additional evidence.

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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. 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 first issue raised by the director is whether the petitioner has established that the proffered position qualifies as that of a religious worker.

Pursuant to 8 C.F.R. § 204.5(m)(2), the term "religious occupation" is defined 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 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. The regulation does not define the term "traditional religious function," but instead provides a brief list of examples. A review of 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. The non-qualifying positions are those that are primarily administrative or secular in nature, such as janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The AAO 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.

The petitioner describes the duties of the proffered position as follows:

[The beneficiary] encourages the giving of the [Christian Science] Monitor by church members and others to friends and relatives and to legislators, libraries and businesses; is responsible for single copy sales and on-line programs as well as for print advertising; maintains contact with subscription agencies, and coordinates field marketing and public relations. She helps to identify and resolve problems, direct and evaluate vendors' work, facilitate communication and provide qualitative statistical analysis of marketing programs. She is the primary

contact for the fulfillment Account Manager, as well as the back-up for the *Monitor's* Account Executive. She reports directly to the Circulation Manager. This is a full-time occupation and one hundred percent of her work time is taken up with these duties.

Stephen T. Gray, Managing Publisher for *The Christian Science Monitor* (hereinafter the *Monitor*), stated in a letter dated November 7, 2001:

The religious mission of the Publishing Society is to rouse, educate, and elevate human thought through its publishing activities; and to energetically promote the interests of Christian Science in accordance with *The Manual of The Mother Church*. . . .

Therefore, it is clear that the *Monitor* is a primarily religious activity of the Christian Science religious denomination.

\* \* \*

The *Monitor* was intended to touch public and world leaders alike with the healing quality of Christianly scientific thought. It was believed that as the *Monitor* succeeded in this aim, so would it have actively furthered mankind's acceptance of Christian Science. Hence the *Monitor* is an essential expression of the Christian Science Church that happens to be in the form of a daily newspaper.

The *Monitor* fulfills the specific obligation, its founder felt, to extend her Church's healing touch to national and international affairs.

Mr. Gray cites the holding reached in *Assessors of Boston v. Lamson*, 316 Mass 167, 173-174 (1941). In that decision, the Massachusetts Supreme Judicial Court stated, "the dominant purpose of the trustees in publishing *The Christian Science Monitor* is to serve the religious cause of Christian Science." The same court also stated that the *Monitor* "is a missionary organ serving to carry the name and principles of Christian Science to all parts of the world and to cultivate goodwill for the Christian Science movement."

Mr. Gray also cited the holding reached in *Feldstein v. Christian Science Monitor*, 555 F. Supp. 974, 978 (D. Mass. 1983). In that case, the federal district court found "the conclusion inescapable that the *Monitor* is itself a religious activity of a religious organization, albeit one with a recognized position and an established reputation in the secular community."

Finally, Mr. Gray cited the holding reached in *In Re Smith's Estate, Poe v. State Treasurer*, 144 Or. 561, 25 P.2d 925 (1933). In that case, the Supreme Court of Oregon held that a gift to the Christian Science Church for the benefit of the *Monitor* is a gift for a charitable use because the newspaper is being published by the Church for the purpose of more effectively promoting the religion of Christian Science as taught by Mary Baker Eddy.

Mr. Gray stated that the court noted in *Feldstein v. Christian Science Monitor* that numerous administrative bodies have considered the status of the *Monitor* and have determined that it is a religious activity, including the Equal Employment Opportunity Commission, the Internal Revenue Service, the State Income Tax Administrators for Illinois and Massachusetts and the District of Columbia Unemployment Compensation Board. *Feldstein*, 555 F.Supp. at 978.

On appeal, counsel asserts that the publication of *The Christian Science Monitor* has been a traditional religious function of the petitioner for over 100 years, and that the beneficiary's job relates to a traditional religious function. Counsel states that all of the beneficiary's work is directly related to the promotion of the success of that publication through her marketing efforts.

All the documents submitted by the petitioner relate to the purpose for the publication of *The Christian Science Monitor*. None of the material makes any mention of the position of marketing coordinator or indicates that the duties of the job are those of a traditional religious function. Although counsel asserts that the duties of the proffered position **relate** to a traditional religious function, the evidence of record does not support this assertion. The duties of the proffered position are administrative in nature and, as such, do not constitute those of a religious worker. It was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of*

Ramirez-Sanchez, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

The petitioner has not provided any evidence to establish that the duties of the position of marketing coordinator are directly related to the creed or beliefs of the religious organization. Additionally, the petitioner has not shown that the position is defined and recognized by the governing body of the religious organization. Further, the regulation clearly states at 8 C.F.R. § 204.5(m)(2) that secular administrative duties, even if performed by an employee of a religious organization, do not constitute the duties of a religious occupation. The petitioner has not established that the proffered position qualifies as a religious occupation, and the petition must be denied for this reason.

The second issue raised by the director is whether the petitioner has established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(m)(1):

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 November 9, 2001. Therefore, the petitioner must establish that the beneficiary was engaged continuously in a qualifying religious vocation or occupation from November 9, 1999, to November 9, 2001.

The record shows that, as of the filing date of the petition, the beneficiary was a nonimmigrant R-1 religious worker with stay authorized to July 5, 2002. The petitioner states that the beneficiary has served The Christian Science Publishing Society as a full-time marketing coordinator for the *Christian Science Monitor* in nonimmigrant R-1 religious worker status since July 5, 1997.

The petitioner has shown that the beneficiary was a full-time, salaried marketing coordinator during the two-year qualifying

period. However, since it has been determined that the position does not qualify as a religious occupation, the beneficiary's two years of experience in the position do not constitute work experience in a qualifying religious vocation or occupation.

The fact that the previous petition to classify the beneficiary as a nonimmigrant R-1 religious worker was approved does not in itself serve to establish that the beneficiary's two years of experience in the position constitute experience in a qualifying religious vocation or occupation. The director's decision does not indicate whether he reviewed the approval of the nonimmigrant petition, and this record of proceeding does not contain a copy of the previous petition. If the previous petition was approved based on evidence that is similar to the evidence contained in this record of proceeding, however, the approval of the initial petition may have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary is qualified as a religious worker. The beneficiary holds a bachelor's degree from Principia College in Elsau, Illinois, with a double major in French and International Relations. The petitioner has not provided any evidence to show that this degree qualifies the beneficiary as a religious worker. As the appeal will be dismissed for the grounds discussed, this issue will not be addressed further in this proceeding.

In reviewing an immigrant visa petition, the AAO must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.