

CI

U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

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



**JUL 21 2003**

File: [Redacted]

Office: VERMONT SERVICE CENTER

Date:

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)

ON BEHALF OF PETITIONER:



**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

**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*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a religious organization. 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), to perform services as an "assistant manager/assistant executive director." The director determined that the petitioner had failed to establish that the position offered to the beneficiary qualified as that of a "religious worker."

On appeal, counsel submitted a statement and stated that a brief would be submitted within 30 days from October 2002. To date, no additional information or evidence has been provided; therefore, the record shall be considered complete.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The issue raised by the director is whether the position offered to the beneficiary by the petitioner qualifies as that of a religious occupation.

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, if the petitioner can demonstrate that the duties of the particular position are those of a religious occupation. Individuals employed in such positions must complete prescribed courses of training established by the governing body of the denomination and their services must be directly related to the creed and practice of the religion. The regulation also reflects that non-qualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions, although qualified in their particular occupation, require no specific religious training or theological education.

The Bureau 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 stated that the beneficiary had been employed by its organization and its parent organization, Armenia Fund USA, since 1993, first in Armenia from 1993-1996, and then in the United States from 1998 to the present (in an H-1B non-immigrant classification). The petitioner stated that the duties that the beneficiary performed for the last two years included: preparing liturgy during the week and teaching Bible classes on the weekends, translating liturgical texts and excerpts, and youth counseling.

The petitioner stated that the duties of the position of "assistant manager/assistant executive director" were to include: translation of various religious documents; planning and coordination of the petitioner's scholarship and orphan sponsorship programs; preparing orphan profiles; translating and "processing" letters from orphans to their United States sponsors; and, the directing of letters between children in the United States and other countries. The beneficiary also was to participate in decision-making meetings regarding scholarship applications for Armenian students attending theological seminaries around the world.

In response to a request for additional evidence, counsel stated that the beneficiary assisted the executive director by preaching entire sermons while visiting parishes. Counsel also stated that the beneficiary had acted as a deacon and preached the gospel since December 1998, organizing and coordinating various events and lectures and acting as liaison. Counsel indicated that the beneficiary's weekly time in this position was divided in the following manner:

Assisting the Executive Director in his [unspecified] duties --18 hours;

Interpreting and translating religious documents --8 hours;

Organizing and coordinating religious events and conducting liaison --8 hours; and,

Performing duties as an "assistant/deacon" to the pastor of the New York Armenian Evangelical Church --6 hours.

Also included in the record is a position announcement for the position of Executive Director, indicating that the position requires the candidate to be a "Minister of Gospel" and stating that the position is a religious occupation. The announcement is undated and bears no closing date. It is noted that the record

contains no evidence to indicate that the beneficiary is qualified to perform duties as an assistant "minister."

On appeal, counsel states that the position offered to the beneficiary is clearly a religious occupation and that the evidence previously submitted by the petitioner establishes this fact. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez/Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel states that the director must not have entirely reviewed the petitioner's response to the Bureau's request for additional evidence, and that a brief would be submitted on appeal to explain, in detail, the erroneous conclusion of the director. No other evidence or statements have been submitted on appeal.

The petitioner has not demonstrated that the duties of the position of "assistant manager/assistant executive director" constitute those of a religious occupation. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The evidence submitted indicates that the majority of the duties identified are those normally expected of a language translator and/or an assistant executive or manager, rather than a position that would be filled by a salaried employee who completed training in preparation for a career in religious work. Therefore, the petitioner has not overcome the findings of the director, and the petition must be denied.

Beyond the decision of the director, another issue to be addressed is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

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).

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

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 petition was filed on December 5, 2000. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from December 5, 1998 until December 5, 2000. The record indicates that the beneficiary entered the United States at New York City, on July 22, 1997, as a B-2, non-immigrant visitor for pleasure. Also included in the record is a Form I-797A, Receipt/Approval Notice, indicating the beneficiary's approval of status as an "H1B1", temporary worker, for the Armenia Fund USA, with validity granted from March 5, 1998 through February 13, 2001.

As stated in 8 C.F.R. § 214.2(h)(1), the H-1B non-immigrant category specifically includes those individuals coming to the United States to temporarily "perform services in a specialty occupation, services relating to a Department of Defense (DOD)

cooperative research and development project or coproduction project, or services as a fashion model who is of distinguished merit or ability." It does not include the occupation of a religious worker. Requirements of most specialty occupations include that of a bachelor's degree. The petitioner states that the beneficiary possesses a bachelor's degree in international relations and a Master of Arts degree in political science. The beneficiary's transcript indicates his studies from 1990 to 1995 at Yerevan State University, Armenia, with a concentration in international studies, and only one class in the history and theory of religion. The Master of Arts degree was awarded by the Central European University in 1997.

In response to the request for additional information regarding the beneficiary's non-immigrant H-1B status in conjunction with the claim that the beneficiary was performing the duties of a religious worker during the two years immediately preceding the filing of this petition, counsel states that the beneficiary was granted "part-time" H-1B status. No indication of the Bureau's acknowledgement of this "part-time" status, or the beneficiary's other employer under the H-1B category, is included in the record. Further, the beneficiary's salary and the submitted Forms W-2 indicate full-time employment with only the employer listed on the H-1B approval notice.

In response to the request for additional evidence, the beneficiary also provided a "deposition" stating that he did not at first understand the requirements to present all of the duties of the position of the "Assistant Director" due to the fact that the English language is not his native language, and thus, he was unable to communicate to counsel the full extent of his duties. He subsequently retained present counsel, and was able to convey to this new counsel, the complexities of the Armenian Evangelical tradition and faith, one that he states is more complex than other mainstream Christian denominations. The beneficiary concluded by averring that this statement had been translated to him in the Armenian language and that it is true and correct to the best of his knowledge. This statement appears to contradict statements made by both the petitioner and counsel in their assertions that the beneficiary is fluent in the English language to such a degree that the major responsibility of this position is that of translating documents between the Armenian and English languages; or, of the petitioner's statement regarding the beneficiary as "fluent in Armenian, English and Russian, shall provide religious translation, translating chapters of the..."

Although the record does list some duties of the beneficiary, it does not provide a comprehensive description of the beneficiary's activities during the two-year period immediately preceding the filing date of the petition. The unsupported assertions contained in the record do not adequately establish that the beneficiary was actually performing the duties of a religious worker throughout the two years immediately preceding the filing date of the

petition. The fact that the beneficiary was in H-1B status from March 5, 1998 through February 3, 2001, further precludes a finding that he was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition.

Another issue not raised by the director is whether the beneficiary is qualified as a religious worker. As stated in 8 C.F.R. § 204.5(m)(3)(ii), a petitioner for a special immigrant religious worker must show that the alien is qualified in the religious occupation. 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.
- B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.
- C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or
- 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.

In a letter dated October 23, 2000, the senior pastor of the Evangelical Church of Armenia, stated that the beneficiary received extensive theological training with the Yerevan

Evangelical Church, Armenia, for a six-month period (1993-1994), serving as an assistant pastor and youth counselor from 1993 through 1996. It is noted that this appears to be within the same timeframe during which the beneficiary was pursuing his undergraduate and graduate studies. The record fails to reflect that the training obtained by the beneficiary qualifies him to assume the position of a religious worker for the petitioner. The petitioner has not established that the beneficiary is qualified to engage in a religious vocation or occupation.

The discrepancies noted call into question the petitioner's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In reviewing an immigrant visa petition, the Bureau 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. See *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.