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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

NOV 13 2003

File: [redacted] Office: VERMONT SERVICE CENTER Date:

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. On appeal, the director's decision to deny the petition was affirmed by the director of the Administrative Appeals Office (AAO). The brief originally submitted to the AAO by counsel on November 6, 2002, was incorporated into the record subsequent to the issuance of the decision of the director of the AAO on July 21, 2003. Therefore, the matter will be reopened on motion, and the previous decisions of the service center director and the director of the AAO will be affirmed.

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 stated that the position being offered to the beneficiary clearly qualified as a religious occupation. Counsel indicated that a brief would be submitted within 30 days of October 8, 2002, the filing date of the appeal.

The director of the AAO noted that counsel had not provided any additional information or evidence as of the date of his decision. The director stated that the record would be considered complete, and a decision would be rendered based on the evidence contained in the record of proceeding.

The director of the AAO dismissed the appeal, based on a finding that the petitioner had failed to establish that the position qualified as that of a religious worker. Beyond the decision of the service center director, the director of the AAO noted that the petitioner had also failed to establish that: the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition; and, that the beneficiary was qualified for a religious worker position within the religious organization.

On motion, counsel asserts that the petitioner has previously submitted substantial evidence to show that the proffered position qualifies as that of a religious worker.

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.

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 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 term "religious occupation" is defined at 8 C.F.R. 204.5(m)(2) 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 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 AAO 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). It is noted that the beneficiary's H-1B position was identified as that of an "Assistant to the Director of Development." The job duties of the position were described by the petitioner in the H-1B petition as follows: working with the Coordinator to plan, implement, and coordinate funding programs; research public and private grant agencies; direct the mail campaign to solicit contributors; research and analyze programs and provide reports; administer the database; direct the activities of the technical support personnel; and translate all letters, press releases and all communications from the home office in Armenia. These duties are clearly administrative in nature and not the duties of a religious worker.

In the current proceeding, the petitioner describes the beneficiary's duties as an "Assistant Manager/Executive Director" as follows: 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.

Andrew Torigian, President of the Armenia Missionary Society of America, Inc., stated in a letter dated November 22, 2000:

> [The beneficiary] satisfies the requirement of at least two years experience in the religious field immediately preceding the filing of this petition. From March 1998 through the present, [the beneficiary] has worked for our parent firm, Armenia Fund USA[,] as well as for our own organization, preparing liturgy during the week and, each Saturday and Sunday, teaching Youth Bible classes, translating liturgical texts and excerpts from the Bible from Armenian into English and vice-versa, and through youth counseling of recent immigrants from Armenia and the former Soviet Union.

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.

On motion, counsel asserts that the petitioner has previously submitted substantial evidence clearly demonstrating that the position qualifies as that of a religious worker. Counsel reiterates the assertions previously advanced in response to the director's request for additional evidence and asserts that the evidence of record is sufficient to establish that the proffered position qualifies as a religious occupation. Counsel has not provided any additional documentation or provided any new information to warrant reversal of the previous decisions of the director and the AAO. 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.

Although the petitioner stated in the H-1B petition that the beneficiary performed primarily administrative duties in his capacity as the "Assistant to the Director of Development," the petitioner states in the current proceeding that the beneficiary has been performing the duties of a full-time religious worker since December 1, 1998. The petitioner has not provided any explanation for this discrepancy in the nature of the position's duties. Doubt cast on any aspect of the petitioner's proof 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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.

It is also noted that, in response to a request for additional

evidence, the beneficiary 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..." In view of the foregoing, it is concluded that the petitioner has not overcome the ground for the denial of the petition and the dismissal of the appeal. Therefore, the decisions of the service center director and the director of the AAO will be affirmed.

Beyond the decision of the service center director, the director of the AAO had noted that the petitioner had also failed to establish that: 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; and that the beneficiary is qualified for a religious worker position within the religious organization. As the previous decisions of the service center director and the director of the AAO will be affirmed on the ground discussed, these issues will not be addressed further.

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. 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.