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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

SEP 26 2003

File:

Office: VERMONT SERVICE CENTER

Date:

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 a church. It seeks to classify the beneficiary¹ 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 “minister missionary and literature evangelist.” The director found that the petitioner has failed to establish that it is exempt from federal taxation or that it qualifies for such an exemption. The director also found that the petitioner has not established that the position offered requires specialized religious training and thus qualifies as a religious occupation.

On appeal, counsel states that a brief is forthcoming within 30 days. To date, over 13 months after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands.

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).

¹ We note that the record contains variant spellings of the beneficiary’s surname. The spelling on the cover page of this decision is taken from the beneficiary’s passport, and is the spelling that appears most frequently in the record.

The first issue in contention regards the petitioner's status as a non-profit religious organization. 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.

Such documentation to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code 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.

The initial filing includes a letter from the Department of State of the Commonwealth of Puerto Rico, indicating that the petitioner "is a non-profit corporation organized under the laws of Puerto Rico." The filing does not include documentation regarding federal (rather than commonwealth) tax exemption. Therefore, the director instructed the petitioner to submit documentation to show that the petitioner is exempt, or eligible for exemption, from federal taxation.

In response to this notice, the petitioner submits a letter from the Division of Tax Exemption, Department of the Treasury, Commonwealth of Puerto Rico, indicating that the petitioner "enjoys tax exemption under the disposition of Section 1101(4) of the Code of Taxes of Puerto Rico of 1994." The letter did not address the issue of federal tax exemption.

The petitioner has also submitted background documentation regarding the Seventh-Day Adventist Church. This documentation does not specifically mention the petitioner or establish that the petitioner is formally affiliated with that church, or that the petitioning church is expressly covered by the parent church's tax exemption. General information showing that the Seventh-Day Adventist Church has congregations in Puerto Rico does not suffice to establish that the petitioning entity is exempt from federal taxation or eligible for such exemption.

The director denied the petition, based in part on the above information. On appeal, counsel states that the petitioner's "articles of incorporation clearly state that the organization is a non profit religious org[anization]." The regulations are clear as to what documentation is necessary. The petitioner cannot supersede these regulations simply by describing itself as a non-profit religious organization.

Counsel states that the director "fails to take into account that the petitioner is from Puerto Rico and does have the tax exemption from the Government of Puerto Rico." Counsel fails to explain

the relevance of the petitioner's location with regard to section 501(c)(3) of the Internal Revenue Code of 1986. If an organization is not automatically exempt from federal taxation by virtue of being located in Puerto Rico, then the petitioner's geographic location is irrelevant for the purpose at hand.

Counsel adds that the petitioner "is tax exempt from IRS as well because it qualifies under the regulations of IRS and is exempt from even filing for the exemption." Counsel offers no explanation for the petitioner's failure to submit such documentation as is required for such an exemption, as required by 8 C.F.R. § 204.5(m)(3)(i)(B).

The remaining issue concerns the beneficiary's occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers definitions of various categories of religious workers:

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.

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

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.

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 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.

Further, 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 petitioner has described the beneficiary as “a minister missionary and literary evangelist” but the petitioner’s initial submission offered little detail as to the beneficiary’s specific tasks or duties. The petitioner has submitted excerpts from the *Working Policy* of the Inter-American Division of the General Conference of Seventh-Day Adventists. The document includes a section entitled “Denominational Employees,” listing the credentials issued to workers in various church positions (but not describing the duties of those positions). Another section of the *Working Policy* discusses the hierarchy of colporteurs (defined as a seller of Bibles, books, and denominational magazines) in the church’s “publishing ministry.” Advancement through the various ranks of colporteurs appears to be contingent on the accumulation of experience and meeting sales quotas. The *Working Policy* indicates that some colporteurs are students in college or high school.

The *Working Policy* refers to an “Introductory Course of the Publishing Ministry Seminar” for new colporteurs, but it does not indicate that this course is required; only that this “training will be available.” The materials in the record do not establish the extent of this training, nor do they show whether the training focuses on religious aspects of the occupation or on sales techniques and other aspects common to the publishing business, whether religious or secular. The petitioner submits a copy of an identification card, showing that the beneficiary is a member of the “Education, Home and Health Service.” Nothing in this title states or implies religious content. If the “Education, Home and Health Service” is unconnected to the petitioner, then this document is irrelevant. If, on the other hand, it is the branch of the petitioning entity that employs the beneficiary, then it is far from clear that the materials sold by the beneficiary are essentially religious in nature.

The director instructed the petitioner to provide specific details about the beneficiary's past and intended future employment. The director also requested evidence to show that the beneficiary's duties go beyond what could be expected of volunteer members of the congregation.

In response, the petitioner submits a "Description of Literature Ministry" from its Publishing Department. The document states, in part:

The Literature Evangelist's work is a full-time outreach of the church and is designed to persuade other people to join, and also to promote good reading material for the home. While the greatest emphasis is on Bible-related books . . . it also includes books on health . . . as well as books on marriage and child raising.

[E]ven though he sells books and magazines, the Literature Evangelist is much more than a salesperson. They are evangelists who preach through literature. The Church believes that book selling is missionary work of the highest order.

The Tenth Circuit Court of Appeals in Denver, Colorado, in *Tate vs. Akers*, said: "The Literature Evangelist's work is primarily evangelistic and the sales of literature in the homes is incidental to their visits."

The issue in *Tate v. Akers*, 565 F.2d 1166, 10th Cir. (Wyo.), Nov. 23, 1977, is whether literature evangelists are subject to a local "nuisance" ordinance barring uninvited visits by "solicitors, peddlers, hawkers [and] itinerant merchants." The case did not pertain directly to immigration matters. Judge Barrett, in a dissenting opinion, found that the purpose of literature evangelism is "raising funds in order to spread the gospel," a conclusion with which the majority opinion did not take issue. *Id.* at 1170. The finding in *Tate v. Akers* that literature evangelists are not "peddlers" does not mandate a finding that they qualify for immigration benefits, even if that court decision was binding outside the 10th Circuit, which does not include Puerto Rico.

[REDACTED] president of the petitioning entity, states that the beneficiary is "assisting with religious services at church, preaching and teaching the Word of God house to house, teaching the Bible and the gospel to groups and distributing evangelistic publications and literature and Bibles, house to house."

The director denied the petition, citing the petitioner's failure to submit official church documentation to establish that the beneficiary's work requires "advanced religious training" and thus amounts to an activity beyond the abilities of a dedicated member of the congregation. On appeal, counsel states "all the evidence submitted indicates that [the position of Missionary literature evangelist] is a religious vocation, one that has been recognized by the church since its inception."

The regulation at 8 C.F.R. § 204.5(m)(2) clearly differentiates between a "religious vocation" and a "religious occupation." The record contains nothing to show that literature evangelists or

colporteurs take permanent vows of commitment or otherwise irrevocably commit themselves to service in the manner of, for instance, nuns and monks. Materials submitted by the petitioner list “colporteur” under “occupations” within the church, and indicate that the duties of a colporteur can be undertaken by a student, who accumulates points toward a scholarship based not on the amount of evangelization conducted or the number of new converts proselytized, but rather on the quantity of publications sold.

The materials submitted by the petitioner are not sufficient to establish that the beneficiary’s primary duties pertain to traditional religious functions, rather than secular functions such as fund-raising through the sales of books on health, child rearing, and other topics that are not intrinsically religious. While literature evangelists are encouraged to engage those they visit in conversation about spiritual matters, their performance is judged by sales volume, and their compensation is partly based on sales commissions, indicating that the church places a significant emphasis on sales. The regulatory definition of “religious occupation” at 8 C.F.R. § 204.5(m)(2) specifically excludes “fund raisers.”

Based on the above, we affirm the director’s findings regarding the petitioner’s failure to establish both its tax-exempt status (or eligibility for such status) and the beneficiary’s eligibility for classification as a special immigrant religious worker.

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.