U.S. Department of Homeland Security
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Washington, DC 20529

C-1

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 03 119 50532 Office: NEBRASKA SERVICE CENTER Date: AUG 0 3 2004

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

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

The petitioner is a Seventh Day Adventist association. It seeks to classify 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 a seventh and eighth grade teacher. The director determined that the petitioner had not established that the position qualified as that of a religious occupation.

On appeal, the petitioner submits a letter. The petitioner indicated on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, that it needed 60 days in which to submit a brief and/or additional evidence. By letter of October 20, 2003, the petitioner requested an additional 30 days (until December 22, 2003), in which to file a brief. As of the date of this decision, more than seven months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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).

The petitioner states that the beneficiary's teaching duties include 45 minutes of teaching the Bible and teaching subjects "where the integration of faith and learning is used in : Science, Math, English, Social Studies, computer and Reading. Integration of faith and learning is making spiritual connections to the other subjects."[1] The duties

[1] In the same letter, the petitioner states that the Bible classes are an hour in length, along with the courses in math, English and reading, while the remaining courses are 45 minutes in length.

also include teaching physical education, spelling and "penmanship." The petitioner states that the Bible, science, and reading texts are denominational.

The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(D) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

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 would reasonably be expected to perform services 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. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) 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 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.

On appeal, the petitioner states that the science course teaches life based on creation, and that all teachings in the schools rely on a "holistic approach to education," where Christ is made the focal point of all academic pursuits. According to the petitioner, a teacher in a Seventh Day Adventist institution must not only be a member of the denomination, but also, if not trained in such an institution, must obtain denominational certification in one of the institutions prior to being allowed to teach.

Nonetheless, the petitioner has submitted no corroborating evidence of the requirements for the position as established by the [redacted] While on appeal, the petitioner refers to documents (other than the Bible) that allegedly establish the role of the [redacted] teacher as a "minister of teaching," it provides no supporting documentation. 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). While it is clear that the teaching of the Bible and the science of creation is religious in nature and that reading may be limited to religious text, the relationship of other subjects such as math, English, social studies, spelling, computer studies and physical education are less so.

The evidence of record does not establish that the duties of the proffered position are more religious than secular in nature.

Beyond the decision of the director, the petitioner has not established that the beneficiary had been engaged continuously in a qualifying religious occupation for two full years immediately preceding the filing of the petition. This deficiency constitutes another ground for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(m)(1) 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 petition was filed on March 14, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working in a qualifying religious occupation throughout the two-year period immediately preceding that date.

The petitioner stated that the beneficiary has been working in the proffered position since August 2000. However, it provided no corroborating evidence of the beneficiary's work experience, to include evidence of any compensation that the beneficiary received during the qualifying two-year period.

Additionally, the petitioner failed to establish that it had the ability to pay the beneficiary a salary. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner submitted a copy of a document labeled as "combined statements of financial position" for the years 2000 and 2001.

The regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence, and submitted no evidence of having compensated the beneficiary during his association with the petitioner. The failure to provide evidence of the petitioner's ability to pay a salary from the date the petition was filed constitutes another ground for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other

> religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has not identified the terms of remuneration or shown that the alien would not be dependent on supplemental employment. Therefore, it has not tendered a qualifying job offer. This deficiency constitutes another ground for dismissal of the appeal.

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.