



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **AUG 04 2004**

IN RE: Petitioner: [REDACTED]  
Beneficiary [REDACTED]

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:

[REDACTED]

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.

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

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**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas 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 beneficiary 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 Sunday School director and librarian. The director determined that the petitioner had not established that the position offered constitutes a qualifying religious occupation.

On appeal, counsel asserts that the prior approval of an R-1 nonimmigrant visa on the beneficiary's behalf obligates the director to approve the present petition, and that the director has placed undue weight on the statement of a tax preparer.

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 issue in contention is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definition:

*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.

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 at 8 C.F.R. § 204.5(m)(2) 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. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services 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.

In a letter accompanying the initial filing [REDACTED] president of the petitioning church, states:

It is on behalf of my congregation that I offer a full time, permanent position to [the beneficiary] to perform the following duties: Sunday School director and teacher; religious librarian (responsible for ordering and maintaining our books and materials); youth counselor; and church representative in our communications with other churches.

The beneficiary has performed the above duties in the United States under an R-1 nonimmigrant religious worker visa.

The director requested further details about the position. In response, counsel argues that the former Immigration and Naturalization Service had previously approved the beneficiary's R-1 visa and two extensions, and thereby "made three (3) adjudications of law upon which the Petitioner and Beneficiary relied. It is simply unconscionable for the Service to conclude four years later that the Beneficiary's duties are not [those] of a 'religious worker.'" Counsel offers a similar argument on appeal, and we will address this assertion in that context.

[REDACTED] lists several functions that the beneficiary has performed for the petitioner:

- Children: preparation for all classes (i.e. program material research; program material purchase; program material distribution; classroom preparation; overseeing of outside needs of children, i.e. daycare location, enrollment and negotiation for subsidies or grants);
- adults: material preparation and distribution; announcements; follow ups;
- programs: distribution of donated goods; liaison with other churches; purchase of goods intended for donations; follow up with needy recipients;
- provision of spiritual guidance to church members;
- planning and arranging educational, social and recreational programs for congregation;
- assistance of clergy members in conducting worship, weddings, baptisms and other services in and coordinating activities of lay participants, such as musicians and ushers;
- visitation of members and non-members in hospitals and convalescent facilities or at home to offer spiritual guidance and assistance, such as emergency financial aid or referral to community support services;
- assistance of clergy and lay teachers in selecting books and reference materials for religious education classes and in adapting content to meet needs of different age groups.

Ms. Garcia states that an average of 60 people attend services during any given week, with over 100 parishioners in attendance for major holidays. She adds that the petitioning church has only two paid employees, one of whom is the beneficiary. (Counsel indicates the petitioner has also filed an immigrant visa petition on behalf of the other employee.) The petitioner offered nothing to show that the religious denomination considers the beneficiary's duties to be a traditional religious function, routinely assigned to a full-time paid employee, rather than tasks usually delegated to a part-time worker or a volunteer from the congregation.

In an effort to establish that the beneficiary has worked for the petitioner as claimed, the petitioner has submitted copies of numerous tax documents. On her 2001 federal tax return, the beneficiary identified her occupation as "Administrative Assistant." The beneficiary's 2002 tax return identifies her as a "Sund SchTea/Relig Library"; but the beneficiary cannot have prepared this return until 2003, well after the petition's April 2002 filing date.

The director denied the petition, stating, "the beneficiary's current, proffered job is not a traditional religious function, but rather an administrative position." The director noted that the beneficiary's 2001 tax documents identify her by the secular title of "Administrative Assistant."

On appeal, counsel states that the prior approval of three R-1 visa petitions or extensions demonstrates that Citizenship and Immigration Services (CIS, briefly called the Bureau of Citizenship and Immigration Services, or BCIS) has repeatedly stipulated that the beneficiary's work constitutes a traditional religious function. Counsel states that, because of these prior approvals, the principle of *res judicata* applies and "[i]t is unconscionable for the BCIS to now conclude after four years of adjudications, and reliance thereon by the Petitioner, that the Beneficiary's occupation is *no longer* a religious vocation."

Counsel has not shown that *res judicata* applies here. Decisions subject to *res judicata* may not be revisited or reopened at all, whereas the approval of nonimmigrant visas can be revoked pursuant to 8 C.F.R. § 214.2(l)(9). Thus, the approval of a nonimmigrant visa is not an unalterable, unreviewable decision subject to *res judicata*, much less a binding precedent that requires CIS to approve a subsequently-filed immigrant visa petition. The petitioner in this proceeding has been afforded due process, including the opportunity to provide additional evidence before the final decision, and the right to file an appeal.

The director's decision does not indicate whether the director reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the beneficiary's work as a self-described "Administrative Assistant," the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that Citizenship and Immigration Services or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

If the R-1 visa was issued in error, that error does not create a presumptive entitlement to perpetuation of that error, regardless of how accustomed the beneficiary has become to her mistakenly granted status. There is nothing "unconscionable" about withholding a benefit to which an alien was never entitled in the first place.

Counsel discounts the 2001 tax return that identifies the beneficiary as an "Administrative Assistant." Counsel claims that this return was "completed by a tax preparer," who "in an attempt to 'pigeon hole' the Beneficiary determined that she was an administrative assistant." Counsel does not identify the purported tax preparer, referring only to "some tax preparer." On the return itself, in the space marked "Paid preparer's use only," however, no tax preparer is identified. The space is, instead, marked "Self-Prepared," indicating that the choice of words is the beneficiary's own rather than that of any third-party tax preparer.

The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In this instance, counsel's reference to a tax preparer is not only completely unsubstantiated, it is also contradicted by the tax return itself. Either counsel was not aware this information on the tax return, in which case counsel is in no position to state whether or not the beneficiary utilized a preparer, or else counsel was aware of this information and simply chose to disregard it. Barring proof that the petitioner did, in fact, hire a preparer, who fraudulently concealed his or her identity by labeling the return "self-prepared" (abetted by the beneficiary, who would have had to have signed the tax return even though it contained information she knew to be inaccurate), counsel's explanation is utterly baseless and without weight, and serves only to undermine counsel's credibility.

Counsel asserts that "the super-majority of the Beneficiary's employment based obligations . . . are related to traditional religious functions, such as religious teaching, religious literature and study (librarian), and inter-church relations." As noted above, the assertions of counsel do not constitute evidence. We have no reason to believe that counsel's representations regarding "the super-majority of the Beneficiary's . . . obligations" are any more accurate than counsel's conjecture regarding "some tax preparer."

The petitioner's congregation has an average size of roughly sixty people. The petitioner has not indicated the size of the church's library. The burden is on the petitioner to demonstrate that the church's 60 regular parishioners avail themselves of the church's library and classes to an extent that would justify the continued employment of a permanent, full-time librarian/Sunday school coordinator. The petitioner has not shown that the petitioner's library is of sufficient size to warrant the continuous attention of a librarian, rather than only periodic review and maintenance and occasional acquisition of new materials. Also, the petitioner has not shown that the beneficiary's library work differs from secular library work, apart from the content of the library materials themselves. "Inter-church relations" may be religious in nature but are not invariably so; routine correspondence, logistical coordination, and other administrative functions do not differ from administrative tasks undertaken by secular employers.

In summation, counsel's appellate brief relies more on speculation than on any reliable evidence in the record of proceeding. When weighing counsel's overall credibility, we cannot overlook that one of counsel's key arguments rests on an unnamed and apparently fictitious tax preparer.

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.