



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER

Date: JUN 22 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]

It is hereby noted to
prevent clearly unwarranted
invasion of personal privacy

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
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 on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification 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 an assistant professor of Theology at Christian Theological Seminary. The director determined that the petitioner had not established that the prospective United States employer is a tax-exempt 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.

According to documentation from the Internal Revenue Service, the employer's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (IRC), which pertains to churches, but rather under section 170(b)(1)(A)(ii) of the Code, which pertains to schools. The director denied the petition solely for this reason. The director stated "[o]nly organizations classified, or classifiable, as 'churches' pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC are qualifying religious organizations for the purpose of special immigrant religious worker classification. Educational organizations classified under section 170(b)(1)(A)(ii) are not qualifying, even if they are organized and operate under the principals [sic] of a particular religious faith."

Subsequent to the issuance of the director's decision, new guidance has been issued regarding the issue of tax-exempt religious organizations. See Memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003), hereafter "Yates Memorandum."

The Yates Memorandum states, in pertinent part:

Qualifying as a religious organization "church" under section 170(b)(1)(A)(i) of the IRC [Internal Revenue Code] is only one method of determining if the petitioner is a qualifying organization. Other organizations classified under section 170(b)(1)(A) of the IRC may qualify if it can be established that this classification is due to religious factors and that they are organized for religious purposes and operate under the principles of a particular faith, rather than solely for educational, charitable, scientific and other 501(c)(3) qualifying purposes.

In instances where the exemption letter from the Internal Revenue Service does not clearly indicate the basis for the exemption, the Yates Memorandum requires the following documentation, "at a minimum," to establish "the religious nature and purpose of the organization":

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The director imposed an unduly restrictive requirement by declaring that an organization must be classified under section 170(b)(1)(A)(i) of the IRC in order to qualify as a religious organization. Because this finding was the only stated ground for denial, the director's decision cannot stand and must be remanded. The director must allow the petitioner the opportunity to submit the required documents listed in the Yates Memorandum.

Review of the record reveals another issue of concern. The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate 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. The petition was filed on September 23, 2002. Therefore, the petitioner must establish that he was continuously performing the duties of an assistant professor throughout the two years immediately prior to that date.

We note that the petitioner is an ordained minister, and has been one since before the qualifying period began in September 2000. Nevertheless, the definition of "minister" at 8 C.F.R. § 204.5(m)(2) is "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." Section 101(a)(27)(C)(ii)(I) of the Act requires that the alien seeks to enter the United States "solely for the purpose of carrying on the vocation of a minister of that religious denomination." Taken together, we can interpret these statutory and regulatory requirements as saying that, to qualify for classification as a minister, rather than as a worker in a religious profession or religious occupation, the individual must have been continuously performing the duties of a minister. It is not sufficient simply to be ordained as a minister, while performing duties that are not inherently the domain of the clergy. The Board of Immigration Appeals ruled that an alien minister, who performed the duties of a minister on a part-time basis, was not continuously carrying on the vocation of a minister. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Here, according to seminary officials, the petitioner "will continue to teach a full-time course load" and perform other faculty functions; the job description does not indicate that the beneficiary will perform duties usually performed by authorized members of the clergy of that religion. Hence, the petition is best considered in light of the provisions governing religious professions and religious occupations.

We note that the seminary asserts that the position requires ordination as a minister, and contends that the beneficiary "has been serving in a ministerial capacity." There is, however, no indication that the petitioner, as an assistant professor, would carry on the vocation of a minister. Simply declaring that a given position is available only to ordained clergy cannot be sufficient. As the Board of Immigration Appeals observed in a precedent decision, we must rely on objective guidelines as to what constitutes a "minister"; otherwise, "Congressional policy in the field of immigration could be readily circumvented by accommodating religious organizations." *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978). In this instance, the seminary could



conceivably circumvent Congressional policy by filling any number of non-clergy positions exclusively with ordained ministers, and then referring to those positions as "ministerial." The seminary's hiring practices cannot and do not supersede federal immigration law and policy.

Also, the petitioner has not performed the same functions throughout the two-year qualifying period. Rather, he served as a chaplain at Bloomfield College "from on or about January 20, 2000 to on or about June 30, 2001," and then assumed his assistant professorship "on or about July 1, 2001," giving him less than fifteen months of experience as an assistant professor during the two years leading up to the September 23, 2002 filing date. Thus, any new decision rendered by the director must address the issue of the two-year experience requirement.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.