



U.S. Citizenship  
and Immigration  
Services

C/

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: OCT 01 2004

IN RE: Petitioner: [Redacted]  
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 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.

*Mari Johnson*

For Robert P. Wiemann, Director  
Administrative Appeals Office

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**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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

The petitioner describes itself as a "non-denominational religious organization." 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 health care worker. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also determined that the petitioner had not established that the position qualified as that of a religious worker.

Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit. Counsel indicated on the Form I-290B that a brief and/or additional evidence would be forwarded to the AAO within 30 days. As of the date of this decision, however, more than nine 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.

On appeal, counsel asserts that CIS erred in rejecting his letters where there was a properly executed Form G-28, Notice of Appearance as Attorney or Representative, submitted. The record contains a properly executed Form G-28 dated November 6, 2003, after the director issued her decision. Although counsel stated in correspondence that a G-28 was included with the petition, no other Form G-28 appears in the record. On appeal, however, we have considered counsel's previous letters and given them the weight merited.

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 Revenue 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 regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization that contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a November 14, 1996 letter from the IRS granting it tax-exempt status under section 501(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi). The petitioner also submitted a copy of its Articles of Incorporation. As the proffered position is with the petitioner's affiliate, the Christian Fellowship House, the petitioner also submitted a copy of a May 22, 1969 letter to that organization, indicating that it was exempt from federal taxation under section 501(c)(3), but not identifying the tax-exemption more specifically. The petitioner also submitted a copy of the Articles of Incorporation for the Christian Fellowship House.

In response to the director's request for evidence (RFE) dated May 1, 2003, counsel for the petitioner stated, "Although the petitioner is not a religious organization under IRC 501(c)(3), Petitioner is an integrated auxiliary organization of the Syosset Gospel Church, a qualifying religious organization as defined by the Internal Revenue Code." Counsel includes a copy of the regulation at 26 C.F.R. § 1.6033-2(h). Counsel further states that the church "qualifies as a religious organization even though it has never formally applied to IRS for this status." The petitioner submitted none of the evidence required pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B) as it pertains to the Syosset Gospel Church.

The record is unclear as to who would be the beneficiary's employer. The evidence reflects that the petitioner, Syosset Gospel Church and the Christian Fellowship House share corporate leadership; however the record is not clear as to the financial relationship that exists between the three organizations. Each appears to have its own payroll. The record contains a 2001 Form 990, Return of Organization Exempt from Income Tax, for the Christian Fellowship House, and a 2002 Form 990 for the petitioner.

In neither case, however, has the petitioner established that the prospective employer is exempt from federal taxation as a bona fide nonprofit religious organization. For the prospective employer, the petitioner must either provide verification of individual exemption as a religious organization from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS for tax exemption purposes. Such documentation to establish eligibility for exemption under section 501(c)(3) 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. Based on the limited evidence provided by the petitioner, CIS cannot determine whether the petitioner is a qualifying nonprofit organization.

The director also determined that the petitioner had not established that the proffered position is that of a religious worker. 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).

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.

In its letter accompanying the petition, the petitioner stated that the beneficiary would be employed as a nurse's aide, whose duties would include "sponge bathing, changing of diapers and catheters, dressing and undressing, preparation for sleep, assistance in walking, assistance in toileting and spiritual counseling through prayer, Bible study and encouragement." The petitioner also stated that the beneficiary had been assisting the Sunday school supervisor in presenting a "'Jr. Church' of Bible instruction . . . for approximately five to ten children . . . while their parents attend Sunday service. We would expect any aide to participate in the children's ministry." The petitioner indicates that the position would also require someone with skill to translate religious and educational material from English to Russian and vice versa.

In a letter dated June 21, 2003, the administrator of the Christian Fellowship House stated, "When we have gone outside our fellowship for such health care workers, they more than often do not measure up to the extremely high spiritual standards set by this Administration . . . They should be willing and able to pray with, counsel, and Biblically console, as well as take care of the elderly person['s] needs." The petitioner indicated that the beneficiary is "on call" as a health care worker "24 hrs a day, 7 days a week . . . Three of the current health care providers on our list . . . have no religious training and work only a fixed schedule."

The petitioner submitted a work schedule for the beneficiary, which includes escort, preparation for sleep, night watch and preparation for breakfast. The petitioner indicated that "Biblical talk between residents and staff is encouraged," and that "[p]rayer with the resident is helpful in getting them off to sleep in a peaceful state of mind."

Although the position appears to involve a degree of religious knowledge and experience, the evidence reflects that the position is primarily secular in nature. The proffered position is that of a caretaker for the elderly. The assistance at Sunday services for children and the translation services do not appear to constitute a significant part of the job duties, and are not included in the beneficiary's work schedule. Although the petitioner states that a member of its fellowship is preferred for the position, it admits that it has hired, and currently employs, health care workers with no religious training. Additionally, as noted above, the record is unclear as to the identity of the prospective employer. The duties of health care worker are with the Christian Fellowship House, the Sunday services for children is with the Syosset Gospel Church, and the translation services appear to be required by the petitioner.

The evidence does not establish that the proffered position qualifies as that of a religious occupation as required by the statute and regulation.

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.