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**U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 05 2005**
WAC 02 041 50851

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:



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

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an Armenian Apostolic 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a teacher of religion at its elementary school and Sunday school. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation or that the beneficiary performed the same religious work continuously for at least the two-year period immediately preceding the filing of the petition. The director further determined the petitioner failed to establish its ability to pay the beneficiary the proffered wage.

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 first issue to be discussed is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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.

The petitioner has offered the beneficiary a position in its "daily elementary Armenian school in Santa Ana, the Ari Guiragos Minassian Armenia School and also [in its] Sunday School in the church." George Gemayel, Chairman of the Board of Trustees for the petitioning church, offers the following description of the beneficiary's proposed duties:

In his role as religion teacher, [the beneficiary] will conduct religious classes for children ages 4 to 12, he will also assist the church in preparing curriculum for Sunday schools and also in organizing seminars on a regular basis for the public at large in dealing with the Armenian Apostolic Church and related topics.

Because of his experience, he will also provide guidance to our youth leaders and Sunday school programs.

On August 2, 2002, the director requested further evidence of the beneficiary's duties as a teacher of religion. Specifically, the director requested the petitioner to:

Provide a detailed description of the work to be done . . . specific job duties, level of responsibility, number of hours worked per week performing the work duties and the minimum education, training, and experience necessary to do the job. Further, explain how the duties of the position relate to a traditional religious function.

In response, counsel for the petitioner submitted a letter, which states:

[The beneficiary] works in a professional capacity as a teacher of religion and history of the Armenian Church . . . he has been teaching Christianity and other topics in different schools for the last several years.

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His [current] duties [include] but not limited to teaching religion and related courses to the elementary and intermediary classes where the students are from 5 to 13 year old. He is also responsible in planning events and religious programs in the school.

[The beneficiary] will conduct religious classes for the student[s] ages 5 to 12 teaching Christianity and the principles of the Armenian Apostolic Faith and the Church's role in our society. He will also be responsible in preparing and implementing the curriculum for the Sunday schools at Forty Martyrs Armenian Church and will organize religious retreats for students and parents together so they can have the opportunity to further enhance their

spiritual life. In addition, he will work with the youth by organizing seminars, different programs and trips to religious sites.

The duties listed by counsel in his response reflect that an overwhelming portion of the beneficiary's duties involve secular activities like "preparing and implementing" curriculum and organizing retreats, programs and trips, and thus, appear to be largely indistinguishable from the principal duties of teachers at non-religious institutions. In most elementary school settings, teachers are responsible for teaching all subject matter, not just one specific course. As indicated by counsel in his response, the beneficiary's current duties involve the teaching of all subjects, not just religion. Counsel fails to submit any evidence, such as lesson plans or standard curriculum to be taught by the beneficiary to support his assertion that the curriculum taught by the beneficiary includes any religious material. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director denied the petition finding that the duties described by the petitioner for the beneficiary's position "were vague and general" and failed to submit evidence that he will actually be teaching religious classes as part of his duties.

On appeal, counsel offers a statement with no additional documentation. Counsel states the following as the reason for appeal:

The petitioner . . . appeals the decision . . . on the grounds that the [beneficiary] has a well founded evidence that in Lebanon he worked as a teacher at the Secondary School teaching Christian religion continuously for two years preceding his filing the I-360 petition. [The beneficiary taught] History class during these years emphasizing in teaching the Armenian students about the history and the faith of Christian people. Because [the beneficiary] wanted the Armenian children to go to school and grow up with a Christian spirit in them he devoted his teachings to educate the Armenian students about Christianity. The classes that [the beneficiary teaches] also emphasized the establishment of Christianity in Armenia, the mainland. [The beneficiary] is willing to teach the Armenian students here in the United States at the Forty Martyrs Armenian Apostolic Church the same classes and give them the same knowledge as he gave to the many students in Lebanon. His primary goal is to teach the students the Christian religion and as they are Armenians to preserve the Christian faith in them.

Counsel's statement does not overcome the director's findings. Without evidence to establish the actual content of the curriculum to be taught by the beneficiary, we are unable to determine if he can be considered a teacher of religion as opposed simply a teacher at a religious institution. This distinction is important because the regulatory definition at 8 C.F.R. § 204.5(m)(2) clearly states that some occupations do not qualify as religious occupations, notwithstanding the religious character of the employer. The fact that the beneficiary teaches at a religious institution does not make the beneficiary's duties a religious occupation. If there is no meaningful or significant distinction between the beneficiary's work at a secular institution and the petitioning religious school, then there is no reasonable basis to determine that the beneficiary's work is a traditional religious function rather than a pervasively secular activity.

Even if the petitioner were to demonstrate that the beneficiary's duties incorporate some religious principles as part of an overall curriculum, we do not find that the beneficiary's primary duties are religious. When comparing the beneficiary's duties to those of other religious instructors, such as Hebrew language instructors or

seminary professors, we find the beneficiary's duties are easily distinguishable. For instance, the duties of an instructor of the Hebrew language can be considered primarily religious because Hebrew is the predominant language of prayer for the Jewish religion. Similarly, the primary purpose of a seminary professor's instruction is to prepare students for the ministry. In these instances, it is difficult to conclude that either position is not a "religious instructor." It is important to note that the United States Supreme Court recently held that, in the context of teaching devotional theology to college-level students in preparation for careers in the ministry, "religious instruction is of a different ilk" than instruction in secular subjects. *See Locke v. Davey*, 124 S.Ct. 1307, 540 U.S. ____ (2004).

The fact that the beneficiary may intersperse some religious material into his teachings does not make him a religious instructor. In this instance, we find the petitioner has offered no evidence to establish the beneficiary's duties are any different from those of a math teacher or a Spanish language teacher who incorporates religious examples into his or her overall lesson plan. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Accordingly, we agree with the decision of the director and find that the beneficiary's position does not qualify as a religious occupation.

The next issue to be examined is whether the petitioner has demonstrated that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for at least the two years preceding the filing of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "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 November 9, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation from at least November 9, 1999.

The record reflects that the beneficiary currently resides in Lebanon and that the beneficiary was outside of the United States during the entire qualifying period.

With the original filing, [REDACTED] provides no specific details about the beneficiary's work experience during the qualifying period. [REDACTED] states only that "[b]ecause of his impressive credentials and experience, [the beneficiary] makes an extremely valuable resource for our church as well as for God's purpose."

The record contains two letters which discuss the beneficiary's work experience during the qualifying period. The first letter, dated July 5, 2001, signed by [REDACTED] certifies that the beneficiary was a "member of [the] teaching staff for the academic year 1998-2000 as a [h]istory, [g]eography, and Arabic [l]anguage [t]eacher of the [e]lementary and [i]ntermediate classes." [REDACTED] does not indicate whether the beneficiary received any remuneration for his work.

In a second letter, dated May 7, 2001, the principal of the College M. & H. Arslanian states that the beneficiary "is a member of our teaching staff. He teaches Arabic language and History (establishment of

Christianity in Armenia) to [e]lementary [students in] intermediate classes. His monthly salary is USD 700.” The letter does not indicate the date in which the beneficiary first began his employment at this institution.

Accordingly, in the director’s request for evidence, the director requested the petitioner to “provide evidence of the beneficiary’s work history beginning on November 9, 1999 and ending on November 9, 2001.” The director further requested “a breakdown of the duties performed in the religious occupation for an average week [including] the employer’s name, specific job duties, the number of hours worked, [and] remuneration....”

In response to the director’s request, counsel states:

During the period beginning November 9, 1999 and ending November 9, 2001, [the beneficiary] was employed in the Armenian Tchatalbachian High School and Mel & Haig Secondary schools respectively. The teaching is supervised and administered by the principals and the Prelacy in Lebanon sets the guidelines.

Counsel fails to submit any documentary evidence of the beneficiary’s purported employment during the qualifying period. As previously discussed, the letters submitted from the beneficiary’s previous employers do not provide sufficient information regarding the beneficiary specific dates of employment or remuneration. Without documentary evidence to support his statement, counsel’s assertion that the beneficiary was employed during the qualifying period is not considered evidence and, therefore, does not meet the burden of proof in this proceeding.

On appeal, counsel states, “the petitioner has a well founded evidence that in Lebanon [the beneficiary] worked as a teacher at the Secondary School teaching Christian religion continuously for two years preceding [the] filing the I-360 petition.” Counsel does not elaborate on this argument; however, there is no documentary evidence in the record to support his claim.

The remaining issue to be discussed is the petitioner’s ability to pay the beneficiary.

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.*

[Emphasis added].

Although the record contains a document entitled “financial statement” for the petitioning church for the period covering January 1, 2000 through December 31, 2000, this statement does not conform with the regulation which requires all financial statements to be *audited* by an independent party. A financial

statement is not considered to be audited is such audit is performed by members of the petitioning organization.

Further, as the statement covers only 2000, it is insufficient to demonstrate that the petitioner had the ability to pay the beneficiary from the time of filing in November 2001 in accordance with 8 C.F.R. § 205.4(g)(2).

Counsel does not address this issue on appeal and no further evidence related to the petitioner's ability to pay has been submitted.

Though the petitioner is free to submit other kinds of documentation, such submissions must only be *in addition to*, rather than *in place of*, the type of documentation required by regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

While the determination of an individual's status or duties within a religious organization is not under the purview of CIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. 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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.