

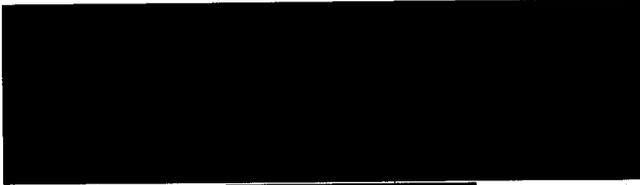
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 06 2005
WAC 01 218 54876

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.

Maui Johnson

5 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted. The decisions of the AAO and the director will be withdrawn, and the petition will be remanded for further action and consideration.

The petitioner is an Orthodox Jewish high school. 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 religious studies. The director determined that the petitioner had failed to submit a satisfactory response to a request for evidence. The AAO ruled that the petitioner had not shown that the beneficiary possesses the necessary qualifications for the position.

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).

Because the earlier decisions of both the director and the AAO are somewhat vague as to the details of the proceeding, we shall review the chronology below.

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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious teacher throughout the two years immediately prior to that date.

The Form I-360 petition indicates that the beneficiary has been in the United States since September 22, 1992, indicating that she was in the United States throughout the entire two-year qualifying period. The beneficiary

entered the United States under a B-1/B-2 nonimmigrant visitor's visa, and her authorized period of stay expired in 1993; she has, apparently, had no lawful immigration status since that time, and she has never been authorized to work in the United States (B-1/B-2 status does not convey employment authorization). Asked whether the beneficiary has ever worked without permission in the United States, the petitioner answered "no." Taken together, these factors are tantamount to a stipulation that the beneficiary has never been employed in the United States. All claims made on Form I-360, or in any document submitted in support of the petition, are made under penalty of perjury.

In a joint letter accompanying the initial petition, counsel and [REDACTED] director of the petitioning school, state that the beneficiary "received her teaching credential in Israel and she has spent the past two years working for the West Valley Hebrew Academy, working as a teacher of religious studies."

In a letter dated March 13, 2001 and submitted with the initial filing of the petition, [REDACTED] principal of West Valley Hebrew Academy states that the beneficiary "has been an early childhood teacher on a voluntary basis for the past two years. [The beneficiary] teaches our students religious studies including religious practices, customs, and holiday preparations."

On December 4, 2001, the director issued a request for evidence, which stated, in part:

Work History: Provide evidence of the beneficiary's work history beginning April 30, 1999 and ending April 29, 2001 only. . . . Include the name of the employer, specific job duties, number of hours worked, remuneration, level of responsibility and who supervised the work. Ideally, this evidence should come in a way that shows monetary payment. . . . However, you may also show payment through other forms of remuneration. If any work was on a voluntary basis, provide evidence to show how the beneficiary supported him or herself (and family members, if any) during the two-year period. . . .

Religious Participation History: Provide a listing of the beneficiary's religious participation history from the time he or she became a member of your religious organization. . . .

Employment History: Provide a listing of the beneficiary's employment history from the time he or she became a member of your religious organization. Include the positions. . . .

Means of Support: You have indicated on the petition that the beneficiary has never worked in the United States without permission, therefore, provide evidence to establish how the beneficiary has been supporting him or herself (and family members, if any).

Religious Professional: Provide evidence that the beneficiary meets the requirements of the position (Professional capacity) being offered, i.e., bachelor's degree of [sic] foreign equivalent, certificate of ordination, etc.

In response to the notice, the petitioner submitted a new letter from [REDACTED] who stated that the beneficiary "was employed as a teacher in our school. She worked for us for three years from September 1998 to June 2001." He continues: "Salary payment was made at a rate of \$10,000 annually. This was done in the form of tuition credit for her son . . . who was a student at our school. He was enrolled as a full time student." While the petitioner claims that the beneficiary was a teacher in Israel as well, the record contains no letters or documentation from any source to support this claim.

With regard to the beneficiary's means of support, counsel stated that the beneficiary "has been living in the U.S. on funds available from the family's many years of work in Israel." The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner provided no evidence that, by the time the beneficiary entered the United States in September 1992 at the age of 38, she and her family of six had earned sufficient funds to support themselves for over nine years without any new income.

Concerning the beneficiary's qualifications, counsel stated: "The position required a qualified and experienced teacher and based on her religious background and teaching experience, [the beneficiary] is qualified as a teacher of Religion. She does not need specific educational credentials but rather qualifies based on her religious and work background." The petitioner's initial submission and response to the request for evidence offer virtually no specific information about the beneficiary's past history, and the only piece of evidence from before 2001 is a copy of the beneficiary's passport.

On May 14, 2002, the director denied the petition, stating, in part:

Classification of the beneficiary as a special immigrant working in a religious vocational [sic] or occupation requires that the petitioner establish the beneficiary is qualified for that religious vocation or occupation. 8 C.F.R. 103.2(b)(11) states:

. . . All evidence submitted in response to the Service request must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record.

On December 8, 2001, the Service requested the petitioner to submit eight items of initial evidence. On January 10, 2002, the petitioner responded to all requests for evidence (RFE), but failed to respond to the beneficiary's Work History from April 30, 1999 to April 30, 2001, Religious Participation, and Employment History.

The director, concluding that the petitioner had failed to meet its burden of proof, denied the petition.

On appeal, counsel argued: "The petitioner did respond to the Service's request regarding the Beneficiary's work experience & work history. . . . The response included a letter from the Beneficiary's employer . . . and a clarification of the job duties & hours in the cover letter from the Attorney of Record." In another new letter, Rabbi Block endorses the accuracy of counsel's previous description of the beneficiary's "job duties and schedule."

The AAO dismissed the appeal on August 19, 2003. In the dismissal notice, the AAO stated that the director had denied the petition because "the petitioner had failed to submit documentation necessary to establish that the beneficiary is qualified to engage in a religious occupation." Elsewhere in the decision, the AAO reiterates the point: "At issue in this proceeding is whether the petitioner has established that the beneficiary is qualified to engage in a religious occupation." This was not, however, the stated ground for denial. While the director *mentioned* that "the petitioner [must] establish the beneficiary is qualified for that religious vocation or occupation," there was never any finding that the petitioner had failed to establish this. Instead, the remainder of the director's very short (ten-sentence) decision focuses on the petitioner's purported failure to address certain aspects of the request for evidence.

On motion, counsel asserts that the beneficiary's religious upbringing and her graduation from a religious high school are sufficient to qualify her for the teaching position offered to her. Counsel contends that "College is frowned upon" by many Orthodox Jews, and therefore an Orthodox Jewish high school would neither require nor expect its teachers to have a college education. These assertions, like many of counsel's prior claims, are not corroborated by any documentary evidence. Nevertheless, there is also no support for the AAO's finding that the beneficiary's position requires a college degree. The petitioner never listed such a degree as a requirement for the position; the first mention of a degree came in the director's request for evidence. In this notice, it appears that the director was simply offering a list of examples of credentials that *might* be required for a given position. The director's poor wording of the notice (the director used the word "professional," which connotes a baccalaureate degree, and preceded the list not with "e.g.," which means "for example," but rather "i.e.," which means "that is") falsely suggests that the position offered to the beneficiary is a professional position requiring a bachelor's degree. The deficiencies in the petitioner's arguments on motion are the result of prior deficiencies in the decisions issued by the director and the AAO.

At present, we are not persuaded that the record contains sufficient evidence to support approval of the petition. At the same time, however, the record contains no definitive evidence of ineligibility. The director's denial notice was unacceptably vague in terms of the grounds for denial, and the initial appellate decision ignored those grounds to focus on another basis entirely. Thus, the petitioner has been denied a fair opportunity to respond to specific grounds for denial.

If the director finds that past statements from counsel, the petitioner, and [REDACTED] insufficient, the director should explain how these statements are deficient, and specify the minimum evidence necessary to overcome this deficiency. For example, if the director does not find [REDACTED] statements to be credible, the director may request that the petitioner submit contemporaneous documentation from West Valley Hebrew Academy, such as course schedules or school bulletins, to demonstrate that the beneficiary was, in fact, a full-time teacher of religious subjects during the time claimed. Regarding the issue of the beneficiary's compensation, compensation need not take the form of a monetary salary in order for the compensated work to qualify as employment for immigration purposes. *See Matter of Hall*, 18 I&N Dec. 203 (BIA 1982).

If the director suspects that the beneficiary was engaged in secular employment during the qualifying period, the director may instruct the petitioner to submit contemporaneous bank records showing that, in early 1999, the beneficiary had sufficient savings on hand to support, for two years, herself, her spouse, and however many of her four children were dependent on her at the time. (Three of the beneficiary's children were over the age of 18 when the qualifying period began in 1999.)

The director should give the petitioner one final opportunity to address clearly-defined deficiencies in the record, and if the director determines that the petitioner still has not met its burden of proof, the denial notice must plainly specify the grounds for denial.

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 previous decisions of the director and the AAO are 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 AAO for review.