

PUBLIC COPY

Identifying data deleted to
prevent unauthorized disclosure
warranting
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



cl

APR 15 2005

FILE: LIN.03 199 51883 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 is a regional office of the Salvation Army, an international religious and charitable 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 Corps helper. The director determined that the petitioner had not established that the position qualifies as a religious occupation. In addition, the director determined that the petitioner had not established that the beneficiary would not rely solely on supplemental employment or solicitation of funds for support.

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).

First, we shall address the director's findings regarding supplemental employment. 8 C.F.R. § 204.5(m)(4) requires the petitioner to state how the alien will be paid or remunerated, and to clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. In doubtful cases, additional evidence such as bank letters, recent audits, church membership figures, and/or the number of individuals currently receiving compensation may be requested.

The petitioner's initial submission did not set forth the terms of the beneficiary's remuneration. Subsequently, the petitioner has submitted documents showing that the beneficiary's salary as a Corps helper was \$365.39 per week as of November 2002.

In denying the petition, the director stated: "The petitioner has stated that the beneficiary will receive a salary for his employment. However, the petitioner has not stated that the beneficiary will not be solely dependent on supplemental employment or solicitation of funds for support." The petitioner's salary offer, while not conducive to an affluent lifestyle, nevertheless constitutes a living wage. The petitioner has stated its intent to pay the

beneficiary \$19,000 per year. Assuming the petitioner actually pays this salary, the beneficiary obviously will not be *solely* dependent on supplemental employment. The beneficiary's job duties do not include a significant amount of fund-raising or solicitation of funds, and the beneficiary's salary is not contingent on fund-raising, and there is no indication that the beneficiary's work for the petitioner is only an incidental activity that he undertakes in his spare time from some other, primary career. We therefore withdraw this finding by the director.

The other issue in contention concerns the nature of the beneficiary's work for the petitioner. 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.

Major Loren Carter, the petitioner's divisional secretary for business, describes the position and the beneficiary's qualifications:

As the Coordinator, [the beneficiary] will have the normal traditional duties associated with a Corps Officer. These include building and developing a strong Hispanic Ministries program in the Corps area. He will minister to the "whosoever" through the spiritual, educational, and social ministries established, adopted or created by [the petitioner] for the sake of Jesus Christ. He will develop youth programs, adult programs and character building programs in the Corps/Community Center for the Hispanic population. [The beneficiary] will represent [the petitioner] at community meetings and will develop stewardship and funding for the Corps' Hispanic programs. . . .

[The beneficiary] has been a member of the Salvation Army since 1980, as a Junior Soldier, and then enrolled as a Senior Soldier (adult) in 1989. He attended college in Chile. [The beneficiary] began his employment in 2000 with [the petitioner] in Salina, Kansas, as an Hispanic Ministries Coordinator. Most recent[ly], he is working as the Hispanic Ministries Coordinator with the Olathe, Kansas, Corps. . . .

[The beneficiary] is more than qualified for the position being offered to him. He has been a longtime member of the Salvation Army and is able to conduct religious services, provide religious education, social services, and perform other duties usually performed by an Officer of the Corps.

Ellie Dunlap, business administrator for the petitioner's Olathe Corps Community Worship Center, states "I have enclosed a copy of [the beneficiary's and his spouse's] job descriptions." The description, dated January 2003, shows the beneficiary's name under the title "Corps Helper" and offers a detailed description of that position:

The Corps Helper will be an evangelist, shepherd, trainer, leader, administrator and community leader. He will be responsible to develop, participate, and manage an effective evangelism/visitation program that demonstrates results; salvation of souls & Corps growth. . . . **The clear and stated intention is to expose this person to the realities of Army Officership, helping them become better equipped in order that they may fulfill their calling to become a Salvation Army Officer.**

(Emphasis in original). The passage in bold type indicates that the position of Corps Helper is not a career goal in itself; rather, it appears to be preparatory toward the ultimate goal of Officership.

The director issued a request for evidence concerning the distinction between a "Corps Helper" and a "Hispanic Ministries Coordinator." In response, counsel states:

A letter from Major [REDACTED] dated November 6, 2003 . . . explains the confusion between job titles. [The beneficiary] is in a "Corps Helper" position as a Hispanic Ministries Coordinator. Basically, the "Corps Helper" designation connotes the level of experience and training within the Salvation Army denomination and the Hispanic Ministries Coordinator is the day to day title that is being used because [the beneficiary] works mainly with the Hispanic members and population in his current position.

Major [REDACTED] November 6, 2003 letter does not closely match counsel's characterization of that letter. Major [REDACTED] "In my previous correspondence I had indicated that the beneficiary was a 'Hispanic Ministries Coordinator.' This was an error on my part. His previous position in Salina, Kansas, was Corps Helper and his present position in Olathe, Kansas is Corps Helper." Even though [REDACTED] states that it was "an error" to refer to the beneficiary as a Hispanic ministries coordinator, the petitioner has submitted a new job description for the beneficiary, this time listing his title as "Corps Helper/Hispanic Ministries Coordinator." Like the previous description, this description states "revised 1/03" in the lower right corner. This description, like the other version, indicates that "[t]he clear and stated intention" of a Corps helper's work is to prepare for a future position as an officer.

Counsel repeats a section of the beneficiary's previously submitted job description:

A detailed job description for a Corps Helper specifically states that "The clear and stated intention is to expose this person to the realities of Army Officership, helping them become better equipped in order that they may fulfill their calling to become a Salvation Army Officer." [The beneficiary] has not yet gone through "officer" training with the Salvation Army.

[REDACTED] indicates that that position requires a high school diploma, membership in the Salvation Army, two years of experience in a Salvation Army program, and "a strong desire to become a Salvation Army officer." [REDACTED] adds that the beneficiary has "expressed interest in becoming a Salvation Army officer. . . . This application process has been started."

The director denied the petition, stating that the petitioner has not shown that the beneficiary's position requires "any specific religious training or theological education."

On appeal, counsel asserts that "this training/education requirement" is not found in the statute or regulations, and therefore cannot be upheld. Upon consideration, we find that the director did rely far too heavily on the "training" issue, to the exclusion of other factors (such as consideration of the beneficiary's specific duties, described at length in the record).

This being said, however, there is another issue that requires attention, but which the director did not raise in the denial notice or in previous correspondence. As noted above, the petitioner has consistently indicated that the position of "Corps helper" is, by design, only a stepping stone to the position of "Officer," and that the beneficiary desires, and has applied, to become an Officer. The petitioner, on appeal, submits a "Glossary of Salvation Army Terms." This glossary includes, and the petitioner has highlighted, the term "Officer," defined as

“A Salvationist who has left secular concerns at God’s call and has been trained, commissioned and ordained to service and leadership. An officer is a recognized minister of religion.”

The above evidence indicates that an “Officer” is an ordained minister who “has been trained.” Given that the beneficiary seeks to become an officer, it follows that the beneficiary seeks to enter the United States to carry on the vocation of a minister. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to establish that the alien possesses the necessary qualifications of a minister. (In this respect, the issue of training becomes not only relevant, but crucial.) Also, with respect to ministers, 8 C.F.R. § 204.5(m)(3)(ii)(A) requires evidence of two years’ experience in the vocation of a minister. Here, we have only the petitioner’s assertion that the beneficiary intends to begin the training process that would, if completed successfully, culminate in his ordination as an Officer.

Furthermore, the statute and regulations indicate that the beneficiary must intend to enter the United States *solely* for the purpose of working as a minister. It is not readily clear that this provision permits an alien to enter for the sake of working temporarily in some other occupation, with the ultimate goal of ordination. The director’s decision did not address this issue, on which fundamental questions of eligibility appear to hinge. The director must afford the petitioner a reasonable opportunity to address this issue before the issuance of a new decision.

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.