



U.S. Citizenship
and Immigration
Services

vent clearly unwarranted
invasion of personal privacy

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FILE: [Redacted] Office: VERMONT SERVICE CENTER
EAC 03 263 52865

Date: [Redacted]

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:



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

Robert P. Wiemann, Director
Administrative Appeals Office

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is an "outreach organization aimed at providing Jewish education, and raising Jewish awareness and pride for every Jew." 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 its religious outreach coordinator. The director determined that the petitioner had not established that the position qualifies as that of a religious worker.

On appeal, counsel submits a brief and additional documentation.

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 issue on appeal is whether the petitioner established that the position qualifies as that of a religious worker.

The regulation requires that the alien must be coming to the United States at the request of the religious organization to work as a religious worker. 8 C.F.R. § 204.5(m)(1)

The proffered position is that of religious outreach coordinator. In its letter of September 23, 2003, the petitioner described the job duties as follows:

[The beneficiary] will continue her responsibilities for promoting and marketing our workshops, seminars, organizing lectures, classes and special events for families, children, college students and adults, with a focus on gaining a deeper understanding of Judaism.

Moreover, [she] will continue to work one on one with participants in our seminars, lecturing and directing participants in the workshops, helping them become more knowledgeable about their Jewish faith and heritage. She will explore and discuss their religious backgrounds, what they have learned through our programs, and then develop programs for the continuation of their religious growth and education. [The beneficiary] plays an integral part in designing and implementing programs, which call for the re-introduction of Judaism to American Jews who are unaffiliated, marginally affiliated and/or intermarried. We are able to accomplish this by offering a broad spectrum of religious classes and religious activities . . . Such programs also encompass one or one religious counseling, tutorial sessions and further religious workshops.

The petitioner stated that the position is compensated at the rate of \$50,000 per year including benefits, and is a full-time position, requiring 40 hours of work per week.

In response to the director's request for evidence (RFE) dated September 2, 2004, [redacted] the petitioner's founder and director, stated that he created the proffered position in 2001 "to address the organization's need for religious counseling, follow-up, co-ordination of classes and curriculum development" for a "diverse range of participants." [redacted] outlined four "aspects" of the position's responsibilities. The first aspect is responsibility for organizing, promoting and marketing workshops, seminars, lectures, classes and special events.

Specifically, this first aspect of her duties means that [the beneficiary] must play an integral role in selecting lectures and presenters that are most appropriate to fulfilling these goals and design the programs of lectures, events and entertainment that are all religiously inspiring and religiously informative.

In order to do this, [the beneficiary] must be familiar with the contents of the lectures, the religious goals of the organization and the nature of the people who attend the events. She must further conceptualize the advertising materials, decide where advertising should be done, and personally be involved in visiting the various classes and events . . . in order to recruit people . . . and to observe the impact of the activity on the participants' religious commitment and observance . . . In this capacity she is required to spend at least 20 hours per week.

The second aspect of [her] job duties . . . is that she "works privately with participants in our seminars, lecturing and directing participants in the workshops, helping them become more knowledgeable about their Jewish faith and heritage. She will explore and discuss their religious backgrounds, what they have learned through our program, and then develop programs for the continuation of their religious growth and education.

Specifically, this means that she must be able to answer their questions of faith, and counsel them in observance of the Jewish religion . . . These duties take up anywhere between 6 to 12 hours per week.

The third aspect of [her] duties involves her work with children in our organization. Her duties require that, where feasible, she coordinate placing children, with little or no religious background, into religious schools and summer camps, which provide the children with a solid foundation into their faith and Jewish heritage . . . Her duties in this regard range from 5-8 hours per week and vary depending on seminar duties.

The fourth aspect of [her duties], and a critical one at that, is to design and coordinate religious classes, Sabbath experiences and workshops for other religious organization with who [the petitioner] has close partnerships and shared goals. [Emphasis in original.]

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).

Citizenship and Immigration Services (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.

Counsel asserts on appeal that the director's decision is contrary to case law and cites several unpublished AAO decisions to support his argument. However, while 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

On appeal, Rabbi Suchard states the petitioner is an outreach ("kiruv") organization that is similar to Christian evangelism and missionary activities. According to Rabbi Suchard:

The goal of kiruv is to bring secular and unaffiliated Jews into the fold of religious observance. [redacted] organization exist in the United States and around the world, all employing [redacted] educators and kiruv coordinators to work towards the stated goal . . .

Traditionally, kiruv is not the realm of congregational Rabbis . . . The first point of entry into religious life is usually accomplished by a person who is eloquent, knowledgeable, charismatic and sensitive to those who are not religious, and very importantly is successful in the secular world as well. The secular Jew feels much more comfortable dealing with someone like [the beneficiary] than with a Rabbi initially. The kiruv worker must have knowledge of Judaism and also the ability to convey that knowledge to the novice.

The petitioner also submitted an undated letter from Rick Probst, the director of Discovery Production, who stated:

[O]rganizations [such as the petitioner] have traditionally existed within our faith to carry out Jewish outreach, known as "kiruv."

The purpose of these organizations is to bring Jews closer together. We do more than just educate. Our goal is to help Jews of all backgrounds become observant Jews by strengthening their faith. In this vein Jewish outreach is like Christians who perform evangelical functions.

As such organizations grow, it has been traditional for the duties that the [redacted] cannot handle to be delegated to others. The position of Religious Outreach Coordinator is such a position. All Jewish Outreach Organizations the size of [the petitioner] generally have someone that fulfills a role like [the beneficiary].

At our organization, that person has the title Follow-up and Program Coordinator and they perform the following duties: works on our programs, directing participants in the workshops, helping them become more knowledgeable about their Jewish faith and heritage; explores and discusses participants' religious backgrounds, what they have learned through our programs, and then develops programs for the continuation of their religious growth and education; designs and implements programs, which call for the re-introduction of Judaism to Jews who are unaffiliated, marginally affiliated and/or intermarried; organizes, promotes and markets our workshops, seminars, lectures, classes, programs and special events.

The evidence submitted by the petitioner reflects that the proffered position is directly related to the religious creed of the denomination, and that, while not employing a universal title, the duties are recognized by the denomination and are traditionally full-time, salaried positions.

The evidence sufficiently establishes that the position qualifies as that of a religious worker.

Nevertheless, the case may not be approved as the record now stands, and it will be remanded to the director to enter a new decision that considers whether the petitioner is a qualifying religious organization.

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, which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a copy of an April 17, 2002 letter from the IRS, reflecting that the organization was granted tax-exempt status under section 501(c)(3) of the IRC as an organization as described under sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC.

According to documentation from the IRS, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the IRC, which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the IRC, which pertains to publicly-supported organizations as described in section 170(c)(2) of the IRC, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers in part to religious organization, but may also apply to many types of secular organizations.

An organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution.

Because the IRS determination letter that classifies an entity under section 170(b)(1)(A)(vi) of the IRC cannot, by itself, establish that the entity is a religious organization, that determination letter cannot satisfy 8 C.F.R. § 204.5(m)(3)(i)(A). The other option, at that point, is to comply with 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (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, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

In response to the director’s RFE of June 14, 2004, the petitioner submitted a copy of its articles of incorporation, which contain the appropriate dissolution clause and a copy of one of its brochures. The record also contains copies of various workshops and seminars sponsored by the petitioner. The record, however, does not contain a copy of a properly completed IRS Form 1023, with its supporting documentation.

On remand, the director should give the petitioner an opportunity to submit all documentation required by 8 C.F.R. § 204.5(m)(3)(i), including if appropriate, all of the documentation outlined in the Yates Memorandum to establish eligibility under 8 C.F.R. § 204.5(m)(3)(i)(B).

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 AAO for review.