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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
WAC 03 208 54044

Office: CALIFORNIA SERVICE CENTER

Date: FEB 24 2005

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

 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 a four-year college founded by the Seventh-day Adventist 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 an assistant professor of modern languages in Spanish. 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.

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 under discussion 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 as an assistant professor of Spanish and describes the duties associated with the position:

The offered position of Assistant Professor is an academic position reporting to the Chair of Modern Languages under Academic Administration. Responsibilities include academic advising, teaching lower and upper division Spanish classes, committee participation, Spanish curriculum revision, Spanish culture courses, and academic related activities. The requirements for this demanding position are a Masters in Spanish with Hispanic philology from an accredited institution, at least 10 years of Spanish teaching experience and knowledge of higher education.

In his notice of intent to deny the petition, the director noted the record contained no evidence to establish that the duties required of the beneficiary in teaching Spanish amount to a religious occupation or traditional religious function. In response, [REDACTED] Academic Dean for the petitioning entity, states:

[The beneficiary's] activities as an instructor of the Spanish language embody the tenets of Christianity as followed by the Seventh Day Adventist Church and have a religious significance for all of the students enrolled in her courses.

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As demonstrated by a detailed review of [the beneficiary's] lesson plans the substantive material covered in the teaching of the Spanish language embodies the practice of Christianity as embodied in the faith of the members of the Seventh Day Adventist Church. As a liberal arts college, PUC offers a holistic education which means we not only instruct the students but we educate the student academically and spiritually.

One of our goals in the Spanish language program, as part of the Modern Languages Department, is to integrate the Christian faith and its tradition of service with learning a foreign language. Some of the activities that [the beneficiary] engages are presentation of devotionals in class, memorization of bible texts in the target language, visits to local Spanish Seventh day Adventist churches and participation in church programs. With the lessons each week there is a discussion of religious topics and lifestyle topics in the topic language and discussion of spiritual concerns and needs during advisal sessions with Spanish majors.

The director denied the petition and concluded that "the petitioner has not established that the duties of the beneficiary's prospective occupation relate to a traditional religious function."

On appeal, counsel argues that “the petitioner has submitted documentation that establishes that the [b]eneficiary’s duties as an instructor of the Spanish language are inseparable from her teaching of the religious tenets of the Seventh Day Adventist Christian faith.” Counsel does not elaborate on this argument; however, nothing in the record supports this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. 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).

Counsel also submits a copy of a document entitled “Policy on Hiring of Non-Adventist Faculty: Results of a Telephone Survey.” The document reflects that out of the eight institutions that responded to the survey, only one does not hire non-Adventist faculty. The remaining eight institutions have all hired non-Adventist faculty. We note the fact that the petitioner hires faculty that are not of the petitioner’s denomination is not persuasive evidence that the petitioner considers the beneficiary’s position as a traditional religious function.

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. Thus, it can be concluded the fact that the beneficiary teaches at a religious institution does not automatically make the beneficiary’s position 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.

The petitioner fails to submit the beneficiary’s lesson plans to support the assertion that the curriculum taught by the beneficiary includes any religious material. 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).

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. Counsel attempts to compare the beneficiary’s duties to those of a nurse in a religious hospital. However, in this instance, we find a more appropriate comparison can be made to teachers of academic subjects similar to the beneficiary, rather than nurses, who are employed in an entirely separate occupation.

When comparing the beneficiary’s duties as a Spanish instructor to those of 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).

In this instance, we find the beneficiary’s duties are no different from those of a math teacher who incorporates religious examples into mathematical equations. The duties of both teachers of mathematics and the Spanish language are primarily secular, not religious. The fact that the beneficiary may intersperse some religious material into her teachings does not make her a religious instructor.

Accordingly, we agree with the decision of the director and find that the beneficiary's position does not qualify as a religious occupation. We, therefore, also agree that the beneficiary cannot be considered to have performed the same *religious work* continuously for at least the two-year period immediately preceding the filing of the petition.

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.