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Office: NEBRASKA SERVICE CENTER

Date: JUN 24 2005

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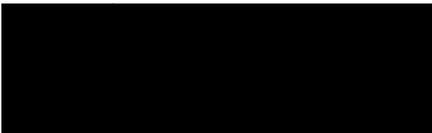
Petitioner:

Beneficiary



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 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 and mother's assistant. 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 petitioner filed a prior petition on behalf of the beneficiary, LIN [REDACTED] which the director denied based on the petitioner's failure to establish that the position qualified as that of a religious worker and because the beneficiary had a break in employment for several months. Counsel states that while the petitioner believed the decision was erroneous, it decided not to pursue an appeal as "this ground for denial would be obviated if [the beneficiary] should remain in service to [the petitioner] for a 'continuous' uninterrupted period of time," and because the petitioner felt it had not explained "the crucial role of Church Aides in the Mennonite religion, and the manner in which unmarried Mennonite women relate to their Church and its congregations."

According to the regulation at 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker. The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part:

Definitions. As used in this section:

Religious occupation means 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

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Counsel specifically rejects the concept that the petitioner seeks classification of the proffered position as that of a religious occupation. According to counsel, the evidence clearly reflects that the position is that of a religious vocation. In a letter dated January 24, 2003, the petitioner stated:

Married Mennonite women do not work outside of their homes in any capacity, including as teachers in Mennonite schools. Single women work within their congregations, including serving as Teachers, and a few work in Mennonite sponsored nursing homes and for the church's publishing houses. Mennonite women will, on occasion, "baby sit" for non Mennonite families and assist in nursing homes and hospitals outside of their congregations. Mennonite women make their own clothes, raise gardens, tend livestock, which they butcher for food, and are responsible for canning, sewing, etc., and providing nursing care for older parents. It is very rare for Mennonite women to live alone, even if unmarried. Mennonite women wear head coverings and very conservative, full-length dresses.

The petitioner also stated that Mennonite children "attend church sponsored schools, staffed entirely by Mennonite teachers," and that formal education ends for Mennonite children at the eighth grade. The petitioner stated that it has two classes of teachers:

- Regular Elementary and Junior High Level teachers: They teach elementary pupils basic academic, social, and other formative skills, plus specific courses such as English, mathematics, social studies, etc.
- Special Education Teachers: They teach elementary and secondary school subjects to educationally and physically handicapped students, including students who are audibly and visually handicapped or mentally retarded.

The petitioner stated there are no special licensing requirements for its teachers; however, they must be Mennonites, have completed their own course of study, and be appointed by the school board "based upon a consideration of their testimony to the Lord, their adherence to the Confession of Faith, and their perceived teaching skills and ability to relate to children." The petitioner stated that teachers are paid \$735 per month with free lodging and some meals, or \$1,920 per month without lodging.

A mother's assistant, according to the petitioner, is a "special position" recognized by the church based on the need of married Mennonite women to obtain assistance with their responsibilities, as they cannot hire assistance from someone who is not a member of the Mennonite faith.

[Mother's assistants] are unmarried sisters, sometimes the eldest daughters in a family, who assist mothers in the discharge of all aspects of their duties to their families and the church. The tasks of a Mother's Assistant typically include, but are by no means limited to, the following:

- "choring"
- baking bread
- gardening
- getting children ready and dressed for schools
- preparing meals
- taking care of sick children and elderly
- sewing

All Mennonite women, as part of their Confession of Faith, accept that (so long as they are unmarried) they may be called upon, from time-to-time, to serve as a Mother's Assistant. In most cases, a congregation is able to fill this need from within their immediate membership. However, in instances in which a congregation cannot fill this need, a "call" is issued to other congregations to furnish assistance.

The petitioner also stated that "single Mennonite women frequently serve as both Teachers and Mother's Assistants, but generally not at the same time." Mother's assistants are paid \$30 per day, receive free room and board, and typically work four days a week.

In his decision, the director stated:

Counsel for the petitioner is attempting to qualify the beneficiary under the category of religious vocation by asserting that all Mennonite women are referred to as "sisters" and . . . at all times wear head coverings and ankle length dresses." Although the petitioner has attempted to equate the duties of this position as on parallel with those associated with those of a Nun, the Service is not persuaded. Catholic Nuns take a life long vow of their positions, are involved in formal religious training, that cannot be obtained in any other setting. The position being offered, Teacher/Mother's Aide [sic], primary method of training is through life experiences and general membership in the Mennonite faith, not through formal, regulated theological studies and training.

The director also rejected the opinion of Sister [redacted] a sister with the Roman Catholic Order of the Wheaton Franciscans. Sister [redacted] concluded that the Mennonite "Church Aide" is similar to that of the Roman Catholic nun because she herself was trained and worked as an X-ray technician and that nuns are involved in a

wide array of activities in service to the church, including teaching and elder care. "It certainly appears that Church Aides have committed their lives to Christ and the service of their church, perform functions similar to those performed by Nuns, and are cared for by their church, in a manner that is consistent with the way in which Roman Catholic Orders care for their members."

On appeal, counsel asserts that the regulation requires neither formal, regulated religious training nor that the duties be "uniquely religious in nature," and that a religious vocation is not limited to nuns, monks or religious brother or sisters (although counsel further asserts that the proffered position, is "in all material respects," that of a religious sister).

We do not read the director's decision as implying that a religious vocation is limited to a select group of religious workers, and the director utilizes the Catholic nun as simply an example of the typical requirements for becoming a member of a religious vocation. However, we withdraw the director's determination or any inference in his determination that a religious vocation requires formal, regulated theological studies and training, or that specified duties within the religious vocation must be "uniquely religious in nature." Clearly, there is nothing in the statute or regulation that imposes such a requirement on those who are engaged in a religious vocation.

Nonetheless, we concur with the director that the petitioner has not established that the position qualifies as that of a religious vocation. There is no evidence that the church pays the mother's assistant or reimburses the employing family for the assistant's services. Counsel and the petitioner do not argue that all members of the Mennonite faith are engaged in religious vocations by virtue of their commitment to their religion. Clearly this argument would not be reasonable. The petitioner submitted no evidence that the position requires any more commitment to the religious faith than any other member of the denomination. The only unique qualification for the proffered position is that the worker is an unmarried female. Except for the fact that she cannot be a schoolteacher, once the female marries, she performs basically the same work although she is no longer permitted to work outside the home.

Additionally, while the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with 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).

Counsel argues on appeal that the director's decision is contrary to the provisions of the Foreign Affairs Manual (FAM) and previous CIS decisions granting R-1 nonimmigrant religious worker visas for other beneficiaries. The FAM, which the United States Department of State uses to administer consular visa processing, is not binding on CIS in the administration of the Act. Further, The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Although counsel specifically rejects the proffered position as that of a religious occupation, we evaluated the evidence to determine if the position meets the requirements of a religious occupation.

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 and recognizes 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 reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

The duties of the proffered position include teaching general subjects in school and performing general household work, and therefore are primarily secular in nature. The duties do not constitute a religious occupation merely because they are performed in a strict religious environment.

The petitioner has not established that the position is a religious vocation or occupation within the meaning of the statute and regulation.

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.