

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



C1

FILE:

[Redacted]  
LIN 02 009 50335

Office: NEBRASKA SERVICE CENTER

Date:

MAY 10 2005

IN RE:

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:

SELF-REPRESENTED

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 Director, Nebraska Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Seventh-day Adventist "religious and health-educational 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 medical missionary. The director determined that the petitioner had not established that the position qualified as that of a religious worker.

On appeal, the petitioner submitted 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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation 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."

According to 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.

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.

The petitioner states that the Seventh-day Adventists "are of the belief that through a healthier lifestyle we will have clear minds, and thereby able to experience a deeper and clearer communion with God, and also be physically able to serve the needs of others." In its letter accompanying the petition, the petitioner described the beneficiary's job duties as follows:

1. In whatever position he ministers, to be watching for those who are in need of counsel, advice and instruction in health and religious matters.
2. In whatever position he works, to be watching for the opportunity to share the doctrines of the Seventh-day Adventist Church.
3. To teach and encourage neighbors, guests and participants to improve their failings and how to achieve a fuller life through Adventist health principles and living.
4. To find those who will allow him to study the Bible truths and doctrines of the Seventh-day Adventist Church with them.

In response to the director's request for evidence (RFE) dated November 8, 2002, the petitioner stated that the beneficiary "fulfills his medical mission in our local outreach center (a health food & Bible literature store) as a Health and Religious Counselor. When he meets customers, neighbors, and guests . . . he is able to counsel, advise and instruct them in health and religious matters including health ministry and vegetarian cooking." The petitioner also states that when the beneficiary is not "counseling customers, [he] works as a clerk in the store."

The record reflects that the primary responsibility of the medical missionary is to sell health food items and literature. While some degree of religious knowledge and knowledge of the petitioner's religious creed are required for the position, the evidence reflects that the medical evangelist is primarily engaged in the sale of goods.

It is noted that selling literature and health food items is not an inherently religious activity. The Board of Immigration Appeals (BIA) has previously held that an alien engaged in the sale of toys, jewelry, and trinkets as a means of fund-raising for the Unification Church, even for as little as one-third of his time, was engaged in impermissible secular employment which placed the Church in competition with other sellers of such goods. *Matter of Hall*, 18 I&N Dec. 203, 207 (BIA 1982). The BIA found that such a position may be filled by obtaining an approved application for alien employment certification, Form ETA-750, from the Department of Labor, and then filing an employment-based immigrant visa petition on Form I-140.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, 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. *Id. See also Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

It is fundamental to this immigrant visa classification that the beneficiary must be coming to the United States to work in a *religious* vocation or occupation. *See* § 101(a)(27)(C)(ii)(II) of the Act. Upon review, the petitioner has not met its burden of proof by establishing that the beneficiary's activities as a medical missionary are religious in nature. Although the petitioner asserts that the medical missionary is expected to counsel customers regarding the health and nutritional philosophy of the church, the beneficiary's primary duty is to sell health food and bible literature. The petitioner has not submitted sufficient evidence to distinguish this activity from the similar entrepreneurial activities of a commercial enterprise.

The evidence is insufficient to establish that the position is a religious 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.