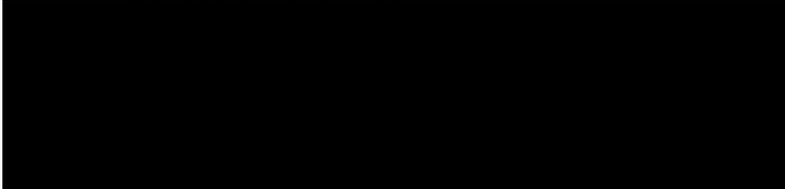




U.S. Citizenship  
and Immigration  
Services

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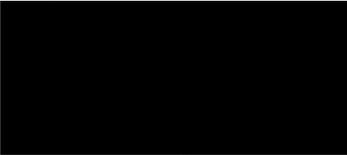
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 14 2005  
WAC 04 119 50027

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, 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 sustained and the petition will be approved.

The petitioner is a local conference of the [REDACTED]. 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 preschool teacher at [REDACTED], a day care facility operated by the [REDACTED]. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, counsel argues that the director misconstrued the nature of the beneficiary's duties. Counsel also offers other arguments beyond the scope of this decision. For instance, counsel cites the Establishment Clause of the First Amendment. The Administrative Appeals Office lacks the jurisdiction to decide questions of Constitutional law, and therefore we will not address such arguments here.

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:

(ii) seeks to enter the United States--

\* \* \*

(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.

The sole issue in contention 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 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.

Further, 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 within 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).

the petitioner's vice president for Personnel, describes the position offered to the beneficiary:

Teachers in Adventist schools are considered Ministers of Teaching because their position is fundamental to furthering the educational and religious mission of the

To quote from the Working Policy 2000-2001:

school system has as its basic evangelistic task the education and redemption of the children and youth of the Church. Its object is to promote development of character and to direct the youth to a 'knowledge of God, the Creator, and of Christ, the Redeemer, as they are revealed in the sacred word.' (From Education, p. 17) In pursuing this task the school system has a greater continuing influence than any other aspect of the church program." The curriculum at all Adventist educational institutions including preschool programs reflect an educational philosophy which is committed to Divine guidance. . . .

The mission of MAC's preschool program is to provide its students with a unique climate and learning experience appropriate for children of parents who are members of the Church. . . . The necessity for teachers who are knowledgeable about and committed to this Adventist educational mission cannot be overstated and all educators in Adventist schools are required to be active and dedicated members of the Church and pay a faithful tithe. The General Conference Working Policy 2000-2001, states, in part: "Day-care centers . . . should be . . . staffed by trained personnel who will emphasize spiritual and moral values." . . .

The position upon which this petition is based is religious school teacher for preschool children, ages 2½ to 5. [The beneficiary's] duties include instructing children in elemental subject matter based on age and skill appropriate guidelines as well as supervising activities such as field trips, group discussions and play to stimulate students' interest in their physical and social environment consistent with Church standards. . . .

Moreover, [the beneficiary] is required, by example and instruction, to integrate Adventist beliefs and philosophy into all of the activities she oversees. . . . In addition, she is expected to be available to students and parents to answer their religious questions; counsel and pray with them about their problems including their spiritual and moral dilemmas; provide guidance and encouragement based on the Bible and the writings of as well as other Church teachings; and lead them in worship and social activities. . . .

Moreover, as is required of teachers in the Adventist school system, she has taken many Bible courses . . . at the [REDACTED] an Adventist institution of higher education owned and operated by the [REDACTED]

Documentation in the record confirms the petitioner's claim that the beneficiary took several courses, including Philosophy of Adventist Education, at [REDACTED]. Prior to her arrival in the United States, the record shows that the petitioner taught at Adventist schools in the Philippines for 12 years.

The record contains a partial copy of *A Bible-Based Curriculum*, including a section entitled [REDACTED] which states: "The underlying principles of [REDACTED] education derive their base from God's Word. . . . In the acquisition of knowledge, skills, and competence, the Bible is the most important single means for mental and spiritual growth, and Bible study lays a sure foundation for true education."

On December 22, 2004, the director instructed the petitioner to submit "a detailed description of the work to be done" and to "explain how the position [of] pre-school teacher relates to a traditional religious function." In response, [REDACTED] director of [REDACTED] and the petitioner's child development centers coordinator, states:

The Education Code under which all Seventh-day Adventist schools are operated states clearly that the Seventh-day Adventist school system is an integral part of the [REDACTED] and is based upon the commission given in Matthew 28:18-20 that the basic task of the Church is an educational task. Following this mandate, "[t]he Seventh-day Adventist school system has as its basic evangelical task the education and redemption of the children and youth of the Church. . . . In pursuing this task the school system has a greater continuing influence than any other aspect of the Church program." (Education Code sec. 950). In fact, within the denomination, teaching is considered a sacred ministry. . . .

By establishing a strong pre-school outreach with its eight Child Development Centers, the [petitioning conference] believes that it is playing a vital role in the formation of children's values, character, spirituality and religious beliefs. . . .

One of the main components of [the beneficiary's] position is to guide her young charges in developing the key religious attitudes toward the Bible, prayer, faith, hope, love, and how to behave within the family and the community in ways that reflect Christian values.

The petitioner submits additional certificates regarding the beneficiary's training in the Philippines, showing that the beneficiary took courses regarding topics such as "Child Evangelism." Copies of sample pages from a daily log of lessons taught in the petitioner's class show that some of the subject material is unquestionably religious in nature, based on biblical verses. Other lessons involve secular topics such as the alphabet, counting, identifying colors, and so on.

The director denied the petition, stating:

The majority of the beneficiary's work consists of teaching activities applicable to all preschool settings regardless of whether or not they are affiliated with a religious organization. Agreeing to teach within a code of conduct that conforms to Seventh Day Adventist philosophy is not sufficient to make an individual a religious worker for immigration purposes. . . . The insertion of some degree of religious content into inherently secular activities . . . cannot suffice to transform such activities into religious instruction, nor can such activities be construed to constitute a religious vocation or occupation.

Therefore, the petitioner has not established that the duties of the beneficiary's prospective occupation relate to a traditional religious function.

On appeal, counsel quotes various documents from the Seventh-day Adventist denomination regarding the importance of education and its role in the religious indoctrination of children within the church. We have already discussed similar materials above. This establishes recognition, at the denominational level, of the religious significance of the beneficiary's work.

The director appears simply to have assumed that the religious content of the beneficiary's work is negligible, limited to a short segment of an otherwise pervasively secular preschool curriculum. Review of the materials does not support this conclusion. While there is secular content in the curriculum, the religious element appears to represent a substantial proportion of the content, rather than merely a token amount. We also note the petitioner's requirement that the preschool teacher must be a member of the Seventh-day Adventist denomination. Therefore, this is not an instance in which the church will hire any qualified teacher who promises to adhere to a basic, church-endorsed code of conduct. (If the petitioner would employ members of other denominations or faiths to do the same job that the beneficiary is doing, then the petitioner would be hard pressed to explain how the position is a religious occupation within the [REDACTED].) Further supporting this conclusion is the evidence, already discussed, showing that the beneficiary has received extensive church-based training, rather than generic early education training coupled with membership in the denomination. The available evidence indicates that the beneficiary's position is consistent with that of a "religious instructor," which is a qualifying religious occupation pursuant to 8 C.F.R. § 204.5(m)(2).

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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.