



U.S. Citizenship
and Immigration
Services



CI

FILE: [REDACTED]
WAC 03 147 54566

Office: CALIFORNIA SERVICE CENTER

Date SEP 12 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:



identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO hereby moves to reopen the proceeding. The AAO's prior decision will be withdrawn, and the petition will be approved.

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 religious director and instructor. The director based the revocation on several grounds. The AAO reversed some of these grounds, but affirmed the director's finding that the beneficiary's religious duties did not amount to full-time employment in a qualifying religious occupation. Therefore, the AAO concluded, the beneficiary has not worked and does not work in a qualifying religious occupation, and the petitioner has not extended a qualifying job offer.

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)(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. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

The AAO, in its prior decision, examined a schedule of the beneficiary's various duties, and determined that this schedule involved no more than 25 hours of demonstrably religious duties per week, because the balance of the

beneficiary's duties were non-qualifying secular tasks. Therefore, the AAO ruled, the beneficiary did not, does not, and will not work full-time in a religious occupation.

Every religious occupation will involve some amount of secular work, such as completing paperwork or traveling from one site to another. Thus, the occasional performance of secular functions does not preclude a finding that a set of duties constitutes a religious occupation. The AAO appears not to have contested that the majority of the beneficiary's work schedule regards religious activities. The beneficiary's 25 hours of religious duties per week would, therefore, appear to demonstrate that the beneficiary has been, is, and will be principally engaged in qualifying religious duties. The AAO's reasoning, therefore, does not appear to support the conclusions reached in the dismissal decision.

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 previous decision of the AAO will be withdrawn, and the petition will be approved.

ORDER: The AAO's decision of May 26, 2005 is withdrawn, and the petition is approved.