

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

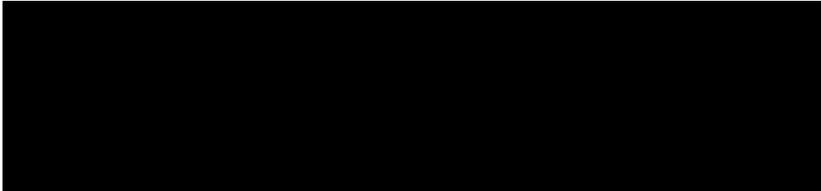
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

C1

PUBLIC COPY



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: AUG 03 2007
EAC 05 240 52719

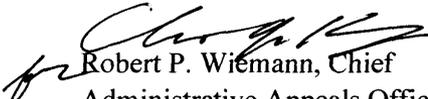
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:
[REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 Presbyterian 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 director of the petitioner's church school. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel and new exhibits.

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 sole stated basis for denial concerns 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.

In a letter accompanying the initial submission, [REDACTED], Pastor of the petitioning church, stated:

[The beneficiary] has been . . . church school director since March 2002. He designed many youth group's religious programs and activities including the Sunday Bible Study Session, Weekly Bible Quiz Contest, Small Group Prayers' Meeting, and Newcomer Settlement Session. In addition, he has committed to giving counseling to the youth group members and other church members.

A detailed discussion of the above duties includes responsibilities such as "Setting educational guidelines to provide a diverse curriculum of spiritual enrichment through Bible and evangelism," "Introducing and teaching on the mission of the church, and basic principles and meaning of important subjects in the Bible" and "Performing the Sunday liturgy at Sunday Worship."

The petitioner also submitted documentation of the beneficiary's prior seminary training and employment, at a church in Korea, in a capacity similar to the proffered position.

On October 11, 2005, the director issued a request for evidence, instructing the petitioner to submit evidence to "establish that the job duties are traditional religious functions above those performed routinely by other members." The director also requested a breakdown of the beneficiary's work schedule, to show that the duties of the position are full-time.

In response, [REDACTED] stated that the beneficiary's "position is one which invariably calls for the religious education and training. I am unaware of any church within church [*sic*] which would even consider hiring a Director of Sunday School who did not have at least this level of religious education or training."

The petitioner submitted a schedule showing that the beneficiary works 45 hours per week, performing functions such as deacons' meetings, preparing the Bible study syllabus, and prayer sessions. A list of church workers indicates that the beneficiary is one of three salaried employees: [REDACTED], earning \$21,600 annually; the beneficiary, earning \$43,200; and [REDACTED], earning \$25,000. Tax documents from 2005 match the above figures. Earlier tax documents show somewhat lower amounts paid to the beneficiary. The list of workers also identifies eight volunteer "Religious teachers," and a list of church members includes 82 names.

The director denied the petition on May 11, 2006, stating that the petitioner “offered no documentation which clearly establishes that the beneficiary’s duties, or those of the proffered position, require specific religious training or a full-time commitment, and cannot be performed by any dedicated and caring member of [the petitioning] organization.” The director also contended that the size of the congregation did not appear to justify the full-time services of a church school director. The director concluded that the petitioner had failed to show that the beneficiary’s position amounts to a qualifying religious occupation that relates to a traditional religious function.

After careful and prolonged consideration of this issue, the AAO finds that the “training” issue has received a disproportionate amount of weight in adjudications of special immigrant religious worker petitions. Obviously, when a given position clearly requires specific training, 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the alien possesses that training; but the issue of training should not be a primary factor when considering the question of whether that position relates to a traditional religious function. Of greater importance is evidence showing that churches or other entities within a given denomination routinely employ paid, full-time workers in comparable positions, and that those positions do not embody fundamentally secular tasks, indistinguishable from positions with secular employers.

On appeal, counsel asserts that the previous church membership figures included only adult members, with 45 children not previously counted. The petitioner does not explain why this information was not withheld prior to the appeal. In any event, previously submitted tax documents show that the petitioner paid the beneficiary at a rate consistent with full-time employment. Also, ministers at other Presbyterian churches assert that the beneficiary’s position relates to a traditional religious function. This is consistent with prior evidence showing that the beneficiary had worked in a similar capacity in Korea and that he studied for four years at a Korean seminary, a level of dedication that would not be expected of a volunteer from the congregation.

Furthermore, the plain wording of 8 C.F.R. § 204.5(m)(2) indicates that religious instructors fall within the definition of “religious occupation.” The petitioner has submitted evidence that the beneficiary’s principal duties involve religious instruction, and the director has cited no evidence to cast any doubt on the petitioner’s assertions. Therefore, the record contains un rebutted evidence that the beneficiary is a paid employee of the petitioning church, in charge of religious education there. The director’s concerns about the size of the congregation are noted, but the record shows that the congregation has been able to pay the beneficiary a salary commensurate with full-time employment. The petitioner has not shown that the petitioner’s claims or evidence lack credibility.

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 met 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.