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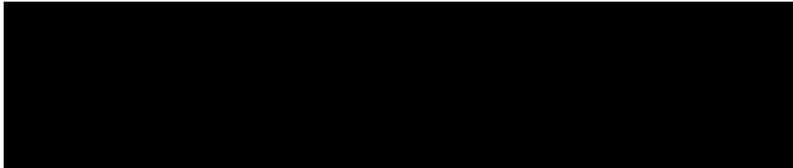
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **AUG 22 2007**
EAC 04 191 52099

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

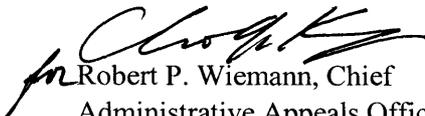
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

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, 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 dismissed.

The petitioner is an assisted living center affiliated with Pinecrest Bible Training Center and the Avoca Christian Fellowship. 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 personal care aide. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits additional letters and documents.

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 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 by 8 C.F.R. § 204.5(m)(2). 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.

Regarding the beneficiary’s past employment, the director did not dispute that this work took place. Rather, the director contended that the experience was not in a qualifying religious occupation. Therefore, the experience issue is tied to the issue of whether or not the position qualifies as a religious occupation; if the occupation issue is resolved, then so is the experience issue. Therefore, we shall focus on the issue of the beneficiary’s occupation.

A “Basic Job Description” submitted with the initial filing of the petition contains the following passages:

The **Health Care Aide** position is a hands on ministry unto the elderly who reside at [the petitioning facility]. The person called to this ministry will . . . assist in the areas of personal care, activities, Bible studies and prayer ministry. The position in the Avoca Christian Fellowship will be teaching languages for the mission fields, participating in mission trips, and ministry outreaches locally, as well as preaching.

Qualifications: A born-again believer who maintains a consistent prayer life. One who loves God and is a willing servant. . . . One who has experience and/or interest in missions and ministerial/people skills. . . .

Duties [the petitioning facility]:

1. General health care, personal care services, food preparation.
2. Prayer support for residents and ministry of the Home.
3. Instruction in Bible studies.

Duties (The Avoca Christian Fellowship):

1. Weekly participation and leadership in worship, preaching and teaching.
2. Teaching foreign languages in the church for missions. . . .
3. Group ministry trips both in America and other nations.

On April 25, 2005, the director instructed the petitioner to “[s]ubmit evidence that the beneficiary’s primary duties . . . require specific religious training beyond that of a dedicated and caring member of the congregation or body. The evidence must establish that the job duties are traditional religious functions above those performed routinely by other members.” The director also inquired as to the relationship between the petitioner and the Avoca Christian Fellowship.

The petitioner's response included several letters from [REDACTED] Administrator of the petitioning facility, and from [REDACTED] of the Avoca Christian Fellowship. In one letter, [REDACTED] stated:

[The beneficiary's] training that she received at Pinecrest Bible Training Center qualifies her in teaching and preaching for having acquired knowledge in the subject area of Biblical studies. This is necessary during times when she is needed to share from the Bible both in our services and in places we minister.

[The beneficiary] also holds a license from the Pinecrest Ministerial Fellowship, associated with the Pinecrest Bible Training Center. This license qualifies her to minister in hospitals, nursing/assisted living homes, jails/prisons, as well as many ministries within the local church.

In a one-page July 7, 2005 letter, [REDACTED] stated: "The Avoca Christian Fellowship is [the petitioner's] nonprofit affiliate. [The beneficiary] is employed and paid by the [petitioner] and is a member of the Avoca Christian Fellowship. She is actively involved in ministry in both organizations." This indicates that the beneficiary's paid employment consists of activities undertaken at, and on behalf of, the petitioning home. Her activities at the church essentially amount to volunteer work. Volunteer work predicated on her church membership does not become qualifying religious work simply because it takes place at the beneficiary's place of employment.

In a two-page July 7, 2005 letter, [REDACTED] listed the beneficiary's duties at the petitioning home:

1. Personal care assistance:
 - a. bathing
 - b. dressing
 - c. medication preparation and administration
 - d. general health monitoring
2. Housecleaning:
 - a. changing beds
 - b. cleaning rooms
 - c. laundry
3. Cooking:
 - a. preparing meals
 - b. serving meals
 - c. attention to special diets
4. Resident Interaction:
 - a. activities
 - b. social supervision
 - c. prayer
 - d. transporting residents to appointments
 - e. personal ministry

A more detailed breakdown of a typical shift schedule consists almost entirely of secular functions. For example, during the 6:45 a.m. to 3:00 p.m. shift, the beneficiary “Balances controlled drug medication,” “Weighs residents if needed,” “Clears and wipes tables,” “Begins washing laundry,” “Assists residents with bathing,” and “Takes out trash,” among other, comparable functions. The one potentially religious activity listed on the schedule for that shift is 30 minutes of “Resident activity (may include Bible study, reading or prayer)” from 2:15 p.m. to 2:45 p.m. The other two shifts, from 3:00 p.m. to 11:00 p.m. and from 11:00 p.m. to 7:00 a.m., do not include this activity; they consist entirely of secular activities such as those listed above, along with “Assists residents with care of teeth,” “Washes laundry,” “Sweeps and mops dining room and kitchen floors,” “Stocks kitchen” and other duties along similar lines. [REDACTED] indicates that the beneficiary works different shifts.

Regarding the beneficiary’s qualifications to work at the petitioning home (as opposed to her qualifications to volunteer for the church that does not employ her), [REDACTED] stated that the beneficiary “has been thoroughly trained as a personal care aide,” and is the petitioner’s only current employee who “can speak and write fluently in Spanish . . . [and] also speaks fluent Hebrew.”

A brochure, entitled “A Call To His Service,” indicates that the petitioner “is seeking responsible, mature and caring Christian men and women to serve on their staff.” The brochure is aimed at “student[s] or graduate[s] of Pinecrest Bible Training Center [who] desire employment in a Christian atmosphere.” The brochure indicates that the petitioning home was purchased by Pinecrest Bible Training Center, and that since 1976 “countless students of the Bible Center have come here to work.” The brochure states that the Avoca Christian Fellowship exists primarily as a church for the petitioner’s employees and their families. According to [REDACTED] “The Avoca Christian Fellowship currently has a 25 member congregation composed of families and single adults.” Tax documents indicate that the petitioner had between eight and ten employees at any given time between 2003 and 2005. The petitioner’s IRS Form 990 return for 2003-2004 indicates that the petitioner “served an average of 17 clients.”

The director denied the petition on July 18, 2006, stating: “the detailed listing of the daily job duties performed by the beneficiary . . . are primarily [those] of a personal care aide and do not include any religious functions at all.”

On appeal, the petitioner submits documentation relating to the beneficiary’s training at Pinecrest Bible Training Center. [REDACTED] states that the petitioner’s certificate of incorporation “**CLEARLY STATES THE MISSION AND PURPOSE OF THE ORGANIZATION TO BE A CHRISTIAN MINISTRY TO THE ELDERLY**” (emphasis in original). The actual wording of the certificate states that the petitioner’s purposes are “[t]o own, operate and provide homes . . . for aged persons and their physical needs, in a wholesome Christian atmosphere, and to provide for the personal, social and spiritual well being of aged persons,” and “[t]o provide, in a wholesome Christian atmosphere, recreational and spiritual fellowship for people of all ages.”

The religious underpinnings of the petitioning home are not at issue here. At issue is whether or not the beneficiary’s occupation relates to traditional religious functions of the petitioner’s religious denomination, as

opposed to secular duties that happen to be motivated by religious conviction. (We note that the petitioner has never specifically identified its denomination. The petitioner has identified itself as being “of full gospel Pentecostal orientation,” but Full Gospel is more accurately described as a movement within Protestant Christianity than as a single denomination in its own right.)

As noted elsewhere in this decision, the petitioner’s initial filing included a “Basic Job Description” that indicated that the position requires “[a] born-again believer who maintains a consistent prayer life.” The document listed three duties, two of which were inherently religious in nature. Subsequently, as the petitioner has provided additional details regarding the beneficiary’s duties, the religious component has shrunk to the point where a detailed 24-hour schedule includes 30 minutes that *may* involve religious activity. *Cf. Soltane v. U.S. Dept. of Justice*, 381 F.3d 143, 150 (“proposed position of houseparent, music instructor, and religious instructor” at facility for disabled youth was a religious occupation because the “position involved a number of clearly religious responsibilities” such as “teaching religious subjects and values.”)

Particularly telling is a new letter from [REDACTED] President of the petitioner’s Board of Directors, who states: “Although Christianity is not a prerequisite to employment at [the petitioning home], we believe that living a life that portrays Christian ethics and character while on the job are extremely important in the care of the elderly.” If “Christianity is not a prerequisite to employment” with the petitioner, then it is very difficult for us to conclude that the beneficiary’s duties relate to traditional religious functions of the petitioner’s denomination. One need not be Christian at all – much less Full Gospel Pentecostal or a “born-again believer” – to perform those functions at the petitioning facility. A non-Christian worker, performing the same functions at the same facility, would not qualify for special immigrant religious worker classification. Mr. Hannan’s admission that the petitioner *prefers*, but does not *require*, workers of a particular religious faith indicates that traditional religious functions of the petitioner’s denomination are not inseparably integral to the beneficiary’s work.

The record supports the director’s finding that the beneficiary’s work at the petitioning home is overwhelmingly secular. The petitioner has made contradictory assertions, first claiming that the position requires “[a] born-again believer” and later conceding that adherence to Christianity, while preferred, “is not a prerequisite to employment.” In context, this is a serious contradiction, and one that impairs the petitioner’s overall credibility. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). The initial “qualifications” listed for the position appear to have been tailored for the petition, rather than an accurate reflection of what the petitioner actually requires (rather than prefers) for the position. It is in this light that we must view skeptically [REDACTED]’s assertion on appeal that the beneficiary performs “religious functions that are needed in our facility . . . that cannot be performed by our other personal care aides.” [REDACTED] asserts that the petitioner’s other employees “lack the in-depth religious training” that the beneficiary received at Pinecrest Bible Training Center, yet prior submissions indicated that Pinecrest Bible Training Center is a major source of the petitioner’s employees and, indeed, that Avoca Christian Fellowship exists primarily for graduates of Pinecrest Bible Training Center who remained in the Avoca area.

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.