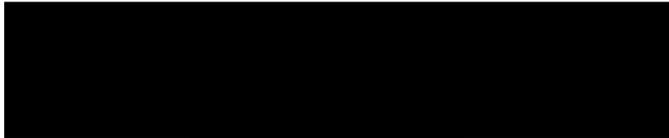




U.S. Citizenship
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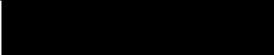
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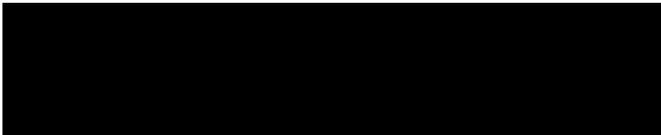
Petitioner:

Beneficiary:



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, 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a religious school and theological seminary. 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 Torah lecturer at Cheder Lubavitch, a division of the petitioning entity. Cheder Lubavitch educates students up to the eighth grade level. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious teacher immediately preceding the filing date of the petition. Specifically, the director alleged contradictory information regarding the beneficiary's presence in the United States, and found that the beneficiary worked only part-time.

On appeal, the petitioner submits additional information regarding the beneficiary's entries into the United States and the usual teaching schedule at Jewish day schools.

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) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two

years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on June 6, 2005. Therefore, the petitioner must establish that the beneficiary continuously performed the duties of a religious teacher throughout the two years immediately prior to that date.

[REDACTED] of the petitioning institution states:

[The beneficiary] is currently employed with our organization as a Secondary School Teacher (religious studies) under the exchange program through Jewish Education Service of North America. . . .

From May 2004 until September 2004 [the beneficiary] worked with our administrator to prepare lesson plans, designed lectures to match our teaching requirements and set up her classroom in contemplation of the school year [that] commenced in September 2004.

From September 2004 until the present time, she has been teaching a full Jewish religious curriculum as a secondary school teacher. . . .

Her hours of teaching are 21.5 hours per week as follows: Monday through Thursday from 9:00 am through 1:30 pm and Friday 9:00 am through 12:30 pm.

On the Form I-360 petition, the petitioner indicated that the beneficiary had entered the United States on October 9, 2004 as a J-1 exchange visitor. Therefore, the director concluded: "the petitioner's letter states the beneficiary began her employment in May 2004, more than four months before she was admitted to the United States." The implication is that the beneficiary's October 2004 entry contradicts the claim that the beneficiary has worked for the petitioner since May 2004.

The director's conclusion is withdrawn. In the initial submission, the petitioner had provided a copy of the beneficiary's Form DS-2019 Certificate of Eligibility for Exchange Visitor (J-1) Status. A stamp on the form shows that the beneficiary was admitted into the United States on May 24, 2004. On appeal, the petitioner submits a second copy of the same form, along with a photocopied page from the beneficiary's passport, again showing a May 24, 2004 entry stamp. The petitioner submits airline documents showing that the beneficiary departed the United States on September 23, 2004. This evidence is consistent with a short visit that did not significantly interrupt the continuity of the beneficiary's work during the qualifying period.

The director's other stated basis for denial concerned the beneficiary's 21.5-hour work week. The director stated:

In a memo dated February 20, 1992, from this Service's Office of Service Center Operations, the following guidance was provided, concerning religious worker petitions:

The alien's qualifying experience for the previous two years and the work to be done in the United States must be full-time. In the immigrant context, full-time work is

generally considered to be 35-40 hours per week or whatever is appropriate for the occupation.

In response, counsel cites 8 C.F.R. § 214.2(f)(9)(ii)(A), which states, in part: "Part-time off-campus employment authorized under this section is limited to no more than twenty hours a week when school is in session." Counsel argues: "Since Congress has termed employment up to 20 hours/week as being 'part-time,' logically we can infer that employment that requires more than 20 hours/week must be considered full-time." This argument fails for numerous reasons. The quoted language is regulatory rather than statutory, and thus derives from the executive branch rather than "Congress." More significantly, the cited regulation does not define part-time employment as being no more than 20 hours per week. Rather, the regulation sets a cap on permissible off-campus work by an F-1 nonimmigrant student. This in no way implies that anything more than 20 hours per week is full-time. Most importantly for the purposes of the present appeal, the proceeding now under review does not involve the off-campus employment of an F-1 student. Counsel has taken the cited regulation entirely out of context, in a situation to which it does not apply, in an attempt to prove a point that the regulation does not make.

More persuasively, counsel revisits the director's quotation from the 1992 memorandum: "full-time work is generally considered to be 35-40 hours per week or *whatever is appropriate for the occupation*" (emphasis added). Therefore, counsel argues, if a shorter work schedule "is appropriate for the occupation," then the director cannot reasonably require a 35-40 hour work week. Unlike the previous argument, this assertion is directly relevant to special immigrant religious worker petitions.

To establish that a 21.5-hour work week "is appropriate for the occupation," the petitioner submits letters from several Jewish schools and organizations. A representative example is the letter from [REDACTED] Administrative Director of Chabad of Greater Somerset County, who states:

Religious day schools customarily divide their school day in half, with the mornings dedicated to religious studies and the afternoons to general studies. Most full-time teachers are employed to teach for the portion of the day in which they are qualified, i.e., religious or general studies.

Therefore full-time employment for such a teacher ranges between 19-22 hours per week, and is considered a full time position.

The other letters contain similar assertions. We note, in this context, that the petitioner's job offer letter, dated January 25, 2005, indicated that the beneficiary's 21.5-hour work week would entitle her "to receive employee benefits normally provided to regular full-time employees."

If the director has any doubts regarding these letters, the director may choose to request documentary evidence (e.g., class schedules and personnel documents) to corroborate the claim that Jewish day schools routinely divide the day into religious and secular halves, and employ separate faculties for each half. At present, however, the record contains nothing that would cast doubt on the assertions contained in the letters.

The director's sole stated grounds for denial involved the beneficiary's arrival date and her work schedule. For the reasons discussed above, these grounds do not justify denial of the petition. There remain, however, issues that prevent the outright approval of the petition based on the record as it now stands.

In a March 11, 2005 letter, [REDACTED] of the Bureau of the Rabbinate Religious Council of Kiryat Ata, Israel, states:

We wish to thank [the beneficiary] for help[ing] needy children and all of her volunteer work that she has so kindly performed over the last ten years. She has done extensive volunteer work for the religio[us] community such as instructing kids about respecting the[r] parents and elders' Jewish customs, holidays, etc. . . .

She has helped these families with homework in bible studies, geogr[aphy] of Israel, blessings, and the writing and reading of Hebrew.

After the director instructed the petitioner to submit information about the beneficiary's compensation, the petitioner submitted a new letter, dated November 17, 2005, in which [REDACTED] states:

[The beneficiary] has worked for us as follows:

January 2002-May 2004 Full-Time Torah Lecturer

Duties of this position were teaching school age children Torah subjects including Bible studies, Jewish Laws of Blessings and Hebrew reading and writing. The hours of this position were Sunday through Thursday from 9am-3pm. She was remunerated at a salary of NIS40,000 annually.

1996-2002 Part-Time Volunteer

Responsibilities of this position were . . . teaching pre school children the Hebrew alphabet and reading to them selected Bible po[r]tions. The hours of this position were Sunday through Thursday from 3pm-4:30pm. She was not remunerated for this position.

Please note that under Orthodox Judaism, women working for the Jewish religion are not ordained.

There appears to be a contradiction, or at least an inconsistency, between the two letters. The first letter repeatedly refers to the beneficiary's "volunteer work" and makes no reference to compensation of any kind. The second letter contains the new claim that the beneficiary earned 40,000 shekels per year. The record, at present, contains no documentary evidence of these payments. If such evidence could be obtained, it would greatly enhance the credibility of the second letter. An explanation from [REDACTED] or some other [REDACTED] official may be of some help, but would not, by itself, resolve the discrepancy.

[REDACTED]'s reference to "Orthodox Judaism" is significant for another reason. Section 101(a)(27)(C)(i) of the Act requires the beneficiary to have been a member of the intending employer's religious denomination

throughout the two-year qualifying period. The regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) echo this requirement. 8 C.F.R. § 204.5(m)(2) defines “religious denomination” as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. Judaism is not a religious denomination in itself; rather, it comprises several denominations with distinct practices and doctrines, such as Reform, Conservative, Reconstructionist, and Orthodox. The last group, itself, contains several distinguishable groups. The Chabad Lubavitch movement, which includes the petitioning entity, finds its origins in the Hasidic branch of Orthodox Judaism, as shown in Internet printouts submitted by the petitioner.

In the letter quoted earlier in this decision, [REDACTED] listed the beneficiary’s work for the petitioner and at [REDACTED]. [REDACTED]’s reference to “Orthodox Judaism” indicates that the employer in [REDACTED] like the petitioner, falls under the Orthodox umbrella. The record, however, mentions additional work by the beneficiary, which [REDACTED] did not discuss in his history of the beneficiary’s work.

In a March 14, 2005 letter, [REDACTED] Educational Director of the Jewish Learning Center at Shomrei Emunah, Montclair, New Jersey, states that the beneficiary “has been working at Congregation Shomrei Emunah teaching Hebrew and Tefillah for the past seven months.” The letter contains no further details regarding the terms of this work. The letterhead of this letter describes [REDACTED] as “A Conservative Synagogue serving Montclair, Glen Ridge, Nutley and Neighboring Communities since 1905.”

If the beneficiary was in fact a paid employee of [REDACTED] during late 2004 and early 2005 (and possibly after that), then she was simultaneously working for a Conservative synagogue and for the Hasidic petitioning organization. The AAO believes that this issue bears further inquiry. If the beneficiary was employed by two different denominations at once, she was not in the continuous employ of either; and if either position did not require the services of a worker of a particular denomination, then it is not clear how the position could be said to amount to a traditional religious function of that denomination.

Based on the above, we withdraw the director’s stated grounds for denial. We find, at the same time, that the materials in the record contain inconsistencies that the petitioner must resolve before we can conclude that the petitioner has met its burden of proof and that the petition can be approved.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.