

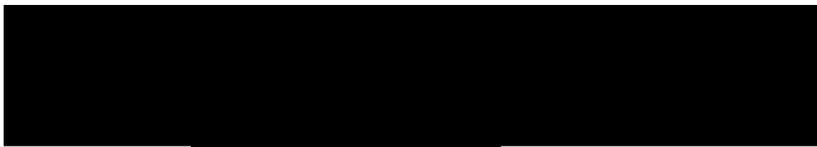


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

CI



FILE: [REDACTED]
EAC 04 157 50255

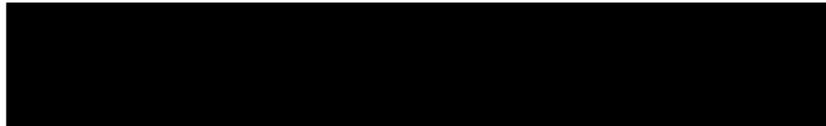
Office: VERMONT SERVICE CENTER

Date: MAR 21 2007

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.

Maui Plussa

→ 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 a church of the Seventh-day Adventist denomination. 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 literature evangelist. The director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious occupation.

On appeal, counsel indicates that a brief will be forthcoming within 30 days. Counsel has since confirmed that no such brief was submitted during the period requested. We therefore consider the record to be complete as it now stands.

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 director's decision hinges on 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.

The petitioner's initial filing was skeletal, consisting of little more than the Form I-360 petition itself. On April 11, 2005, the director requested "evidence that the beneficiary's primary duties . . . require specific religious training."

In response, the petitioner has submitted copies of numerous certificates reflecting the beneficiary's participation in various Seventh-day Adventist lectures and seminars from 1992 onward. [REDACTED] the petitioner's Publishing Director, states:

The position of missionary-literature evangelist is a traditional religious vocation within our organization. The position requires no formal university studies. It does require training as a literature evangelist, experience as [a] missionary and commitment to the service of the Lord.
...

The primary duties of the missionary-literature evangelist include but are not limited to: door to door promulgation of the gospel and those doctrinal beliefs required by the Lord helping those in need by way of particular teachings of the scripture as may be necessary by the need itself; assist the pastors of the churches by expanding the message of the Lord to those unable to come to church, visiting and ministering to the sick and needy, helping others learn about God and the Adventist lifestyles requirements (vegetarian and drug free lifestyles in order to preserve the body as a temple of the Lord).

The director denied the petition on January 11, 2006, stating that the petitioner had failed to provide an adequate description of the beneficiary's position or to establish that "the beneficiary's duties . . . require specific religious training or a full-time commitment and cannot be performed by a dedicated and caring member of the congregation."

On appeal, counsel argues that the director has impermissibly imposed a standard of proof higher than the "preponderance of evidence" standard that typically applies in such instances. This argument would be effective only if the petitioner had established eligibility by a preponderance of the evidence, and the director had required some other, higher, specified standard. This is not the case here. Rather, the director found that the petitioner did not submit sufficient evidence and information to meet even the preponderance of evidence standard of proof.

Counsel contends that the petitioner's evidence is sufficient to demonstrate "that the beneficiary is a bonafide missionary of the Adventist Church and that the position of Missionary Literature Evangelist is a fundamental and protected position within the church statutes and regulations."

The director's denial rested largely on the assertion that the beneficiary's position requires no specific religious training. Whether or not this assertion is true, 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. It is crucial to observe, here, that the director's decision did not rest solely on the "training" issue.

The available evidence suggests that the Seventh-day Adventist Church does, indeed, routinely employ paid, full-time literature evangelists. The remaining issue of concern deals with the nature of the duties of the occupation. Not every full-time church employee works in a qualifying religious occupation, and not every church function relates to a traditional religious function.

Of particular concern is the regulatory statement at 8 C.F.R. § 204.5(m)(2) that the regulatory definition of "religious occupation" excludes individuals principally engaged in fund-raising. The record of proceeding does not identify the petitioner's source(s) of income. If the petitioner derives income, directly or indirectly, through the sale of printed matter, then any employee who devotes a substantial portion of his or her working time to selling such materials is engaged in fund-raising and, therefore, not engaged in a religious occupation. It appears that the beneficiary's duties consist, to a large extent, of the sale of goods. Some of these goods are religious in nature, whereas others are more demonstrably secular. While a vegetarian diet, for instance, is compatible with Seventh-day Adventist doctrine, it does not follow that going from door to door, selling vegetarian cookbooks or books about diet and health, constitutes a religious occupation.

The Board of Immigration Appeals (BIA) has previously held that an alien engaged in the sale of commodities as a means of fund-raising for the Unification Church, even for as little as one-third of his time, was engaged in impermissible secular employment which placed the Church in competition with other sellers of such goods. *Matter of Hall*, 18 I&N Dec. 203, 207 (BIA 1982). The BIA found that such a position may be filled by obtaining an approved application for alien employment certification, Form ETA-750, from the Department of Labor, and then filing an employment-based immigrant visa petition on Form I-140.

When the available evidence is inconclusive, the director is under no obligation to presume eligibility in the absence of plainly disqualifying evidence. Rather, the burden of proof is on the petitioner to establish that the beneficiary does qualify for the classification sought. Here, the director had requested a detailed discussion of the beneficiary's duties and work schedule, and the petitioner responded with a vaguely-worded paragraph that included discussion of such secular issues as health and diet. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Upon review of the record, therefore, we affirm the director's finding that the petitioner has not shown that the beneficiary's intended position as a literature evangelist qualifies as a religious occupation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

We note, beyond the decision of the director, that 8 C.F.R. § 204.5(g)(2) requires the petitioner to submit certain specified documents to establish the intending employer's ability to compensate the beneficiary at the level offered. This evidence must take the form of copies of annual reports, federal tax returns, or audited financial statements, none of which are readily evident in the record. The financial documentation that the petitioner has submitted in this regard is in the Spanish language, without the certified translation required by 8 C.F.R. § 103.2(b)(3). The absence of the required documentation of the petitioner's ability to pay, therefore, constitutes an additional basis for denial of the petition.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.