

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

PUBLIC COPY

C1



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 29 2007
WAC 06 068 52864

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.

Maura Deadnick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 Jewish school. 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 teacher of religious Judaic studies. The director determined that the petitioner had not established that the beneficiary possessed the required experience for the job, or that the position qualifies as a religious occupation.

On appeal, the petitioner submits a new witness letter and copies of previously submitted materials.

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.

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.

8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the beneficiary possesses the necessary qualifications for the position offered.

In a letter submitted with the initial filing of the petition, [REDACTED] Headmaster of the petitioning school, stated that the beneficiary’s “job involves teaching Bible Studies, prayer, Jewish Laws and Custom, Sabbath and Festival observance on a fulltime basis to students of our school.” The petitioner submitted the beneficiary’s pay stubs dating back to 2003, and copies of visa documents showing that the beneficiary was authorized to work for the petitioner as an R-1 nonimmigrant religious worker.

On May 8, 2006, the director instructed the petitioner to “provide a detailed description of the work to be done,” and to “explain how the duties of the position relate to a traditional religious function.” The director also requested “evidence that the beneficiary meets the requirements of the position.”

In response, the petitioner submitted a letter jointly signed by counsel and by Rabbi Sufrin. The letter reads, in part:

The position offered, “Teacher of Religious (Judaic) Studies,” is on a full time basis of 35 hours per week teaching Bible, P[r]ayer, Holiday and Sabbath observances and Jewish Philosophical understanding of ethics and underlying concept[s] of Judaism, to Early Education Grades (Kindergarten through First Grade), and requires 2 years of teaching experience and a religious background of observance plus the 2 years of experience. . . .

The Position of Teacher of Religion, including Laws and customs, Prayer, and bible has always been considered as a traditional religious function, and the years of experience in Israel as a teacher of Religious Studies, clearly classifies her as qualified to work as a teacher of religion, as she has been doing in R-1 Status since 2003.

As evidence of the beneficiary’s experience prior to her work with the petitioner, the petitioner submitted a letter from [REDACTED] on letterhead translated as “Chief Rabbinate of Israel / Bat Yam,” indicating that the beneficiary “worked in our kindergarten (religious school) from 1997-2001.”

A copy of the petitioner’s operating budget shows separate line items for “General Studies” and “Hebrew Studies,” underscoring the distinction between the teaching of secular and religious subjects.

The director denied the petition on July 17, 2006, stating: “the duties of the occupation do not have religious significance [or] embody the tenets of that particular religious denomination.” The director added that the petitioner has not shown that the beneficiary possesses the necessary qualifications for the position.

On appeal, the petitioner submits copies of previously submitted documents showing that the beneficiary had more than two years of experience as a religious teacher at the time the petitioner hired her. Previously, the director did not even acknowledge this evidence, let alone explain why it was deficient. The record contains nothing to cast doubt on the evidence that the beneficiary possesses the required experience.

[REDACTED], Rabbinic Advisor at Chabad of Hancock Park, Los Angeles, California, describes himself as “Spiritual Leader of the Jewish population in Los Angeles of Orthodox persuasion.” [REDACTED] states that “a Teacher of Jewish Religious Studies . . . unquestionably [holds] a recognized position [in] a religious occupation as it is training the youth in belief and observance of the Orthodox Judaic religion.”

As with the issue of the beneficiary’s past experience, it is difficult to explain or justify the director’s finding that a religious teacher does not work in a religious occupation. 8 C.F.R. § 204.5(m)(2) includes “religious instructors” in the list of qualifying occupations. Certainly, job title alone cannot determine eligibility, or else a petitioner could simply apply a qualifying title to a non-qualifying job. Nevertheless, in the present instance, the duties described for the beneficiary appear to be wholly consistent with the title of religious teacher or religious instructor. The director offered no basis for concluding otherwise, but simply put forth the summary finding that the beneficiary’s duties lack “religious significance.” This finding cannot stand.

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.