

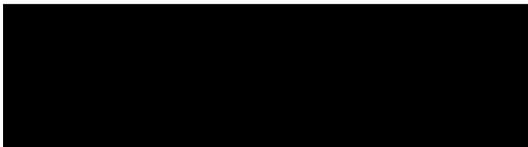
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U.S. Citizenship  
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FILE:

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Office: TEXAS SERVICE CENTER

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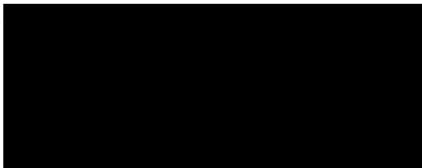
Petitioner:

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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 day 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 kindergarten Judaic studies teacher. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a Judaic studies teacher immediately preceding the filing date of the petition.

On appeal, the petitioner submits arguments 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 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 February 21, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Judaic studies teacher throughout the two years immediately prior to that date.

The beneficiary entered the United States on June 15, 2005 as a J-1 nonimmigrant exchange visitor. In a letter accompanying the initial filing, [REDACTED] Headmaster of the petitioning school, stated that the beneficiary "is currently employed full-time as a Kindergarten Judaic Studies teacher." [REDACTED] of [REDACTED] Educational Center, [REDACTED] stated that the beneficiary "was employed [in] a full time teacher position in our school" from September 2003 to June 2005.

On November 28, 2006, the director issued a request for evidence, instructing the petitioner to submit "evidence of the beneficiary's work history beginning February 21, 2004 and ending February 21, 2006," including "number of hours worked" and other details.

In response, the petitioner submitted copies of tax documents showing that the petitioner paid the beneficiary \$5,965 in 2005 (equivalent to about sixteen weeks' salary at her original rate of pay). The petitioner also submitted a new letter from [REDACTED] who reaffirmed that the beneficiary "worked as [a] full time teacher" at [REDACTED] until June 2006. An accompanying class schedule from that school indicated that the beneficiary worked from 8:00 a.m. to 2:00 p.m. with a half-hour lunch break. As for the beneficiary's work in the United States, [REDACTED] stated, in a letter dated December 8, 2006, that the proffered "position will entail a minimum of 30 hours per week on our campus."

The director denied the petition on May 19, 2007, stating:

it must be concluded that the beneficiary has been and will be working 30 hours per week. In addition, the beneficiary has not worked continuously since she worked 9 months out of a year (September to June). Therefore, the petitioner has failed to establish that there is a permanent full-time job offered and the beneficiary has been performing full-time work continuously, for the two-year period immediately preceding the filing of the petition.

(Emphasis in original.) On appeal, counsel observes: "[a] work year for a full time teacher in a religious or public school is from 9 to 10 months." The petitioner submits a printout from the *Occupational Outlook Handbook* as published on the web site of the Department of Labor's Bureau of Labor Statistics.<sup>1</sup> The excerpt, which discusses the working conditions for school teachers, indicates: "[i]ncluding school duties performed outside the classroom, many teachers work more than 40 hours a week. . . . Most teachers work the traditional 10-month school year with a 2-month vacation during the summer."

[REDACTED] and other witnesses in Israel attest that a six-hour day and a five-day week amount to full-time employment for teachers in Israel. [REDACTED] states:

I . . . would like to clarify what I wrote in a letter dated December 8, 2006 regarding the employment status of [the beneficiary].

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<sup>1</sup> The specific page is <http://stats.bls.gov/oco/ocos069.htm>. The petitioner printed the excerpts on June 12, 2007.

In that letter, it states "This position will entail a minimum of 30 hours per week on our campus." 30 hours would be a minimum; however she and all other full-time teachers work at least 35 hours per week in the school.

For the current school year, [the beneficiary] works in our school from 8:15-4:00 each day for a total of 38 hours per week. The position being offered to [the beneficiary] for the 2007-8 school-year will require her to work in our school from 8:15 to 4:30 p.m. each day for a total of 41 hours per week. These hours are the standard full-time work day for teachers in both public and private schools, religious or non-religious, Jewish or non-Jewish.

Although teachers generally only have on campus teaching assignments with their students during the ten months of the school year, they are expected to prepare lessons and be available to attend professional development seminars and meetings throughout the summer. Additionally, [the beneficiary] receives a paycheck from our school throughout the summer months.

The regulatory definition of "religious occupation" at 8 C.F.R. § 204.5(m)(2) includes "religious instructors" in that category. When determining whether a given alien works or has worked full-time, it is appropriate to consider what constitutes full-time employment in the alien's field; one must take into account the usual norms relating to the occupation.<sup>2</sup> Counsel and various witnesses of record are correct that summer vacation is a standard feature of United States school systems. To ignore this reality would disqualify a whole class of workers who are clearly covered by the plain language of the regulations.

We are not entirely persuaded by [redacted] description of a gradually expanding work schedule, in which the functional minimum of hours worked is considerably higher than the stated minimum. Nevertheless, a teacher's working hours are not limited to time spent actually teaching classes. A teacher must also prepare lesson plans, tend to administrative necessities, and so on. In this respect, [redacted] earlier reference to "30 hours per week on our campus" should not be construed to rule out additional working hours off-campus.

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. The AAO finds that the petitioner has credibly shown that the beneficiary's work schedule can be considered to be full-time, and her experience continuous, in the context of what is normally encountered among religious instructors at private religious schools. We therefore withdraw the director's finding in this respect. As this finding was the sole stated basis for denial, the denial decision is, itself, withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.

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<sup>2</sup> This is, of course, not to say that a religious activity that occupies a negligible amount of time on a weekly or yearly basis, such a duty performed only during weekly services or during the celebration of an annual holiday, could reasonably be construed as "full-time" or "continuous" employment. In the context of religious education, it is clear that this beneficiary's duties are not merely occasional or incidental.