U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 1 5 2004

IN RE: Petitioner: [redacted]

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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as an evangelist. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation. As a necessary consequence, the director also concluded that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in a qualifying religious occupation immediately preceding the filing date of the petition.

On appeal, the petitioner maintains that the beneficiary performs a traditional religious function that qualifies as a religious occupation.

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 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 principal issue 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 in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity

relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. 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.

states "[i]t has been the practice of our church that we employ an evangelist, all under the supervision of the senior pastor. The evangelist has been preaching, leading Bible study. She also had numerous opportunities to counsel the church members and to direct many other special revival meetings for the members." Rev. Oh states that the position requires "a degree in theology . . . and at least two years experience in directing and teaching Bible study." In a separate letter, offers a more detailed list of the beneficiary's duties:

> Her job as an evangelist primarily has consisted of teaching and preaching [the] Bible to church members, leading the praise & Friday night worship, visiting & counseling church members, guiding the foreign student, and participating [in] revival meeting[s] for church members and devotion as well as other related services.

In response to a request for further information, the petitioner indicates that it has employed other evangelists besides the beneficiary. senior pastor of the in America, New Brunswick, New Jersey, states "[i]t has been the practice of our denomination that each church may employ the evangelist," and that the duties of an evangelist are "traditional religious function[s] above those performed routinely by other members." does not establish any authority to speak on behalf of an entire religious denomination. The petitioner, however, does not rely entirely on the assertions of Rev. Ji. The petitioner has also submitted documentation from the denomination's headquarters in Korea, showing that the beneficiary, after earning a university degree in theology, had been employed as an evangelist for a decade before her arrival in the United States.

Overall, the evidence credibly shows that the beneficiary's work is religious in nature, and is a paid occupation, rather than an occasional, part-time duty typically delegated to volunteers from the congregation. Not every alien who claims the title "evangelist" necessarily qualifies as a special immigrant religious worker, but in this instance, the documentation regarding the beneficiary's duties and experience within the denomination persuasively establishes that she works in a *bona fide* religious occupation.

Another issue cited by the director concerns the beneficiary's past experience. 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 membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on June 28, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an evangelist throughout the two years immediately prior to that date.

The record contains considerable evidence that the beneficiary has worked continuously as an evangelist, as claimed. The director, in denying the petition, stated "[t]he evidence submitted does not clearly establish that the alien has been working as a religious worker for the two years immediately preceding the filing of the petition." The director, in arriving at this conclusion, does not appear to have questioned the evidence of the beneficiary's experience. Rather, the director's finding appears to result from the finding that the beneficiary's work is not a religious occupation, and therefore past experience in that work is incapable of fulfilling the two-year experience requirement. The reversal of the director's finding regarding the beneficiary's occupation necessarily negates this ancillary finding. The director having cited no other grounds for denial, we find that the petitioner has overcome the denial of the petition.

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 appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.