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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 2 0 2006

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: 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

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

The petitioner is a publisher. 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 production editor. The director determined that the petitioner had not established that the beneficiary would be engaged in a religious occupation.

On appeal, the petitioner submits additional documentation.

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).
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> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) 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 regulation at 8 C.F.R. § 204.5(m)(3)(ii)(D) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

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 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. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) 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 beneficiary's job responsibilities as detailed by the petitioner include layout, brainstorming cover concepts and interior art ideas, purchasing artwork for the features and columns, commissioning illustrators, preparing feature art, and critiquing art and layouts. The director determined that the petitioner failed to establish that the beneficiary was involved in activities that relate to the selection or editing of the religious content of its publication.

On appeal, the petitioner asserts that the selection of images is just as important to convey the religious content of its magazine as the selection of words. The publisher/editor of the magazine states that the qualifications of the proffered position "require[] more religious training than is to be found among the average faithful, Mass-attending Catholic." To establish its point, the petitioner includes "a sample of the wording of an ad" that it "would use when looking for a production editor." The proposed advertisement states the applicant "should have knowledge of Catholic doctrine and tradition."

This argument is not persuasive. The petitioner does not indicate that it has ever run this advertisement and does not indicate that any previous selection it has made for the position carried this requirement. Further, the language used by the petitioner in the proposed advertisement does not make the knowledge of Catholic doctrine a "must have" qualification nor does it indicate that it requires any more specific theological knowledge or training than the ordinary lay or devout Catholic would have.

The evidence submitted by the petitioner does not indicate that the position existed prior to the beneficiary assuming the role, and the petitioner submits no other evidence that the proffered position is a traditional permanent, full-time position as recognized and defined by the denomination. The petitioner submitted a copy of the church's guidance on "Ethics in Communications" to guide the role of the communicator in the Catholic faith. However, this document does not establish that the role of a production editor on a religious magazine is considered to be a communicator of church doctrine, or that it would be considered by the Catholic Church or its related religious organizations to be a traditional religious occupation within its communication framework. While the position involves some duties that may arguably be religious in nature, such as the initial screening of art for evaluation by the other editors, the primary job responsibilities of the position are secular in nature. These include the acquisition and commissioning of artwork determined to be appropriate after critique by the other editors, layout of the magazine, and proofing and approving the final results.

While the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). The evidence does not establish that the proffered position qualifies as a religious occupation.

The director determined that the petitioner had established that it qualified as a tax-exempt religious organization under section 501(c)(3) of the Internal Revenue Code (IRC). We withdraw that determination.

An organization may submit evidence of its nonprofit status in the form of either a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) or such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC as it relates to religious organizations. 8 C.F.R. § 204.5(m)(3)(i). The petitioner submitted a copy of a July 29, 1996 advance ruling from the IRS advising the petitioner that it had been preliminarily granted tax-exempt status as a foundation under section 509(a)(2) of the IRC. The advance ruling expired in 2000. The petitioner's magazine indicates it has tax-exempt status as a nonprofit educational organization. The petitioner also submitted evidence that it is listed in the 2002 Catholic directory. However, the petitioner submitted no evidence that it is included under a group tax-exemption granted to the Catholic Church. The petitioner has not provided sufficient evidence to establish that it qualifies as a bona fide religious organization as required by the statute.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered salary. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner submitted no evidence that it has paid the beneficiary in the past or of its ability to pay the proffered salary; therefore this deficiency constitutes an additional ground for dismissal.

Additionally, assuming that the petitioner could establish that the proffered position is a religious occupation, the petitioner has not established that the beneficiary was continuously employed as a production editor during the immediate two years preceding the filing of the visa petition. This deficiency constitutes another ground for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation 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) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> (A) 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 April 25, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a lay minister throughout the two-year period immediately preceding that date.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with

their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

The evidence reflects that the beneficiary worked fo prior to commencing her work with the petitioner in March 2001. The record reflects that the beneficiary initially began working with 1997 as a volunteer intern with its *You! Magazine*. The record contains a letter from the beneficiary's mother stating the family provided financial support to the beneficiary during her internship. The record does not establish, as the petitioner asserts, that the beneficiary was supported by her family during her full tenure with *You! Magazine*. A statement provided by the beneficiary indicates that she began working full time for Veritas Communication as art director for *You! Magazine* in 1999 and continued working in that capacity until January 2001.

A letter from the president o states that the beneficiary began working with the company in 1997. Althoug states that in "her professional capacity," the beneficiary served as the creative director and artistic director of the company, designing and composing magazines, books, and other print media, the petitioner provides no contemporaneous evidence of payment to the beneficiary to prove that the position was a full-time, salaried position. Further, the petitioner has not shown that the duties of creative and artistic director at the same as those of production editor at the petitioner's magazine. The magazine's credits reflect that it has an art director in a distinct position than that of production editor.

The evidence provided by the petitioner does not establish that the beneficiary was engaged continuously in the religious occupation for the two years prior to the filing date of the visa 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 not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.