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U.S. Department of Homeland Security
20 Mass. Ave, N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 265 54303

NOV 26 2004

IN RE: Petitioner:
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]

PUBLIC COPY

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 dismissed.

The petitioner is a multidenominational theological seminary. 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 an admissions correspondence processor. The director determined that the petitioner had not established that: (1) the position offered to the beneficiary constitutes a qualifying religious occupation; (2) the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition; or (3) the petitioner is exempt from taxation as a religious organization.

We note that the petitioner has filed two Form I-360 petitions on the beneficiary's behalf. The petitioner filed the first petition, receipt number WAC 03 114 52227, on February 28, 2003. The petitioner filed the second petition, receipt number WAC 03 265 54303, on September 22, 2003. The multiple filings are relevant to this proceeding, for reasons we shall address in the appropriate context. Because both petitions concern the same beneficiary and involve the same evidence, we have consolidated the two records of proceeding. On December 12, 2003, the director denied both petitions. The two denial notices are essentially identical. The cover page for the denial of WAC 03 265 54303 indicates that the petition is a "duplicate filing" of WAC 03 114 52227. The petitioner has filed only one appeal, relating to the second petition, and thus the petitioner has not contested the denial of WAC 03 114 52227. On appeal, counsel argues that the second petition is not merely a "duplicate" of the first, because one of the grounds for denial relates to the petition's filing date and the two petitions do not share a common filing date. We will discuss this argument later in this decision, as part of a more detailed treatment of the grounds for denial.

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 first question is whether the beneficiary's work constitutes a qualifying religious occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definition:

> *Religious occupation* means 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.

The petitioner's director of admissions, [redacted] describes the beneficiary's position as admissions correspondence processor:

> The position for which [the beneficiary's] services continue to be required must combine a committed and personal Christian experience, with technical skills in the field of communications. . . .
>
> [The beneficiary's] duties relate to the admission of students to the various disciplines offered. He will communicate with prospective students . . . ; generate, edit and coordinate transmittal of all admissions applications, and letters relating thereto; review admissions applications and any other communications which may be received from prospective students; review and assist with the evaluation of the Christian Autobiography which is a requisite of the admissions process; review the religious experience of prospective students; assist with the processing of admissions applications; proffer advice as to the academic equivalency of credentials obtained from India . . . ; and perform such other tasks as may be required of him by the Admissions Office.

In a notice of intent to deny, the director quoted the petitioner's description of the position and concluded "[t]he beneficiary's duties do not relate to a traditional religious function. The beneficiary's proffered position is primarily administrative or secular in nature. In addition, the duties of the occupation do not have religious significance [or] embody the tenets of that particular religious denomination."

In response to the notice, [redacted] the petitioner's associate director of admissions, quotes the petitioner's statement of purpose, indicating that the seminary is "dedicated to the preparation of men and women for the manifold ministries of Christ and his Church," in accordance with the injunction in [redacted] 28:19 to "make disciples of all the nations." [redacted] states "[t]he fulfillment of this commitment begins with the Office of Admission without which no student could be admitted to our seminary, and no disciples could be made in furtherance of scriptural dictate." This argument is not persuasive, because the same argument could be made that, without buildings full of classrooms, the seminary could not achieve its educational goal; but it does not follow that the construction workers who built the seminary's structures are religious workers.

Mr. Wong observes that the definition of "religious occupation" at 8 C.F.R. § 204.5(m)(2) includes "workers in religious hospitals or religious health care facilities." [redacted] asserts that, by the same logic, "[workers in…' a seminary . . . are also individuals in religious occupations." The regulatory definition does not mention "workers in a seminary," and we reject the inference that *every* worker employed in a seminary is a qualifying religious worker.

The petitioner submitted no objective, documentary evidence (as opposed to new statements, written specifically to support the petition) to establish that the beneficiary's position is primarily religious rather than administrative in nature.

The director denied the petition, repeating the assertion that the beneficiary's position is "primarily administrative or secular in nature," and lacking "religious significance." On appeal, counsel asserts that the petitioner's "mission statement, statement of faith and the biblical passages quoted do in fact substantiate and support the fact that the duties of the proffered position relate to the most traditional of religious function [sic] of 'making disciples of men.'" The mission statement and statement of faith are general assertions about the petitioning seminary, and there are no biblical passages that specifically relate to the occupation of admissions correspondence processor. There is little dispute that the operation of a theological seminary, as a whole, relates to a traditional religious function, but the beneficiary is not running the seminary or providing instruction in devotional theology.

The record contains no objective documentation (such as a formal job description) to describe the position in terms that are not tailored to secure immigration benefits. The duties listed include a variety of activities, some of which are clearly secular administrative functions. With regard to religious factors, the descriptions provided indicate that the beneficiary "reviews" these factors, but there is no indication that the beneficiary is responsible for selecting new students from among the candidates for admission. The evidence present in the record is simply insufficient to warrant a finding that the beneficiary works in a religious occupation that inevitably involves some administrative work, rather than in an administrative capacity that happens to involve religious subject matter. As described, the beneficiary's job appears to involve preliminary handling of paperwork for further review by others who, in turn, make the actual decisions about seminary admissions.

The next issue raised by the director regards 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 September 22, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an admissions correspondence processor throughout the two years immediately prior to that date.

The petitioner's initial filing on February 28, 2003, included evidence that the beneficiary was a student from 1997 to 2001, and began working in the position offered on March 6, 2001, first under the practical training provision of his F-1 student visa, and later under an R-1 nonimmigrant religious worker visa.

The director issued a notice of intent to deny, indicating that the span between March 6, 2001 and February 28, 2003 was less than two years, and therefore the petitioner had not satisfied the two-year experience requirement. In response to that notice, the petitioner submitted a new petition, the necessary fee for that petition, and copies of pay receipts showing that the petitioner has paid the beneficiary's salary through September 2003.

The director, in denying the petition, noted that the beneficiary did not begin working in his current position until March 6, 2001, which was less than two years before the filing of WAC 03 114 52227 on February 28, 2003. On appeal, counsel observes, correctly, that the petitioner had filed a new petition on September 22, 2003, for the specific purpose of overcoming this issue, and that the director erred by attaching the February

2003 filing date to the new petition. Because the beneficiary began working in the position on March 6, 2001, the two-year requirement is only a valid ground for denial with regard to petitions filed before March 6, 2003. While a petitioner cannot change the filing date of a petition already filed, the filing of a new petition, with fee, necessarily results in a new filing date for that new petition.

Because this cited ground for denial applies only to WAC 03 114 52227 (the denial of which the petitioner has not appealed), and not to WAC 03 265 54303 (to which the appeal pertains), we agree with counsel that the director should not have relied on the February 28, 2003 filing date in denying the petition.

At the same time, information in the record shows that, like the initial filing, the petitioner's second filing was somewhat premature. in response to the notice of intent to deny, acknowledged that the petitioner did not continuously employ the beneficiary after his initial hiring. He stated:

> Following completion of his course of study, [the beneficiary] received a work permit for Optional Practical Training valid from July 31, 2000 to July 30, 2001. . . . On July 30, 2001, [the petitioner] terminated [the beneficiary's] employment pending receipt of the Notice of Approval of our petition for R-1 status for him which was received on September 26, 2001. For the period July 30, 2001 to September 27, 2001 [the beneficiary] was able to support himself from his savings and from assistance received from his brother.

Earlier, in a letter provided with the initial filing, had indicated that the beneficiary "has worked . . . since March 2001." Upon filing the new petition, indicated that the beneficiary worked "through the relevant period of September 19, 2001 through September 19, 2003" letter was dated September 19, 2003).

The two-month gap in employment from July 30 to September 27, 2001, would obviously present a serious impediment to a finding of continuous employment from February 2001 to February 2003. Even with the new filing date, the petitioner has stipulated that the beneficiary's employment had been "terminated" and did not resume until September 27, 2001. It is therefore impossible to demonstrate continuing qualifying employment for any petition filed prior to September 27, 2003. The beneficiary was not merely on a brief, paid vacation exactly two years before the new filing date; he was unemployed and living off his savings when the qualifying period began. The anticipation of imminent employment, however justified, is not qualifying continuous experience. With respect to the two-year continuous employment requirement, the beneficiary is no more eligible under a September 22, 2003 filing date than he was under a February 28, 2003 filing date.

The final issue raised in the denial concerns the petitioner's tax exemption. 8 C.F.R. § 204.5(m)(3)(i)(A) requires the petitioner to submit documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 (the Code) as it relates to religious organizations.

According to documentation from the Internal Revenue Service, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Code, which pertains to churches, but rather under section 170(b)(1)(A)(ii) of the Code, which pertains to schools. The director denied the petition based, in part, on this classification.

It is overly restrictive to assert that only churches, classified under section 170(b)(1)(A)(i) of the Code, can qualify as religious organizations. Other classifications, while not *solely* limited to religious organizations, do not *exclude* such organizations. *See* Memorandum from William R. Yates, Associate Director of Operations,

Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations (December 17, 2003).

In this instance, in response to the director's notice of intent to deny, the petitioner has submitted a letter from the Tax Exempt and Government Entities Division of the Internal Revenue Service, dated April 16, 2002, indicating that the petitioner is "a tax-exempt religious organization described in section 501(c)(3) of the Code." This letter is *prima facie* evidence that the Internal Revenue Service considers the petitioner to be a "religious organization." The director has produced nothing to contradict this letter or to cast doubt on its credibility or authenticity.

While we have overturned the director's finding regarding the petitioner's tax-exempt status, the director's other findings, regarding the beneficiary's occupation and experience, still hold, and constitute sufficient grounds for denial.

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.