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

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 08 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner operates a number of Jewish educational centers. 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 religious editor. The director determined that the petitioner had not established that the position offered constitutes a qualifying religious occupation involving a traditional religious function.

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 sole issue raised by the director is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

> *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.
>
> *Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

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, compensated occupation within the denomination.

Counsel and the petitioner indicate that the beneficiary is bound by vows to the petitioner, and that the beneficiary resides communally with other individuals under similar vows. This description, at least superficially, suggests that the beneficiary engages in a religious vocation rather than a religious occupation; but on appeal, counsel maintains that the beneficiary practices a religious occupation, involving a traditional religious function. The beneficiary's vows and living conditions are claimed but not documented in the record.

In a letter submitted with the initial petition, Lisa Kessler, administrator of the petitioning organization, states "[i]n order to qualify for this position, a person must have background knowledge of Kabbalah, whether it is obtained through independent study of Kabbalah or through classes offered through any one of the Centers located around the world. The person filling the position of an instructor must be multi-lingual." We note that the petitioner seeks to employ the beneficiary as an editor, not an instructor. Ms. Kessler states that the beneficiary "has been a religious editor since 1992."

The petitioner submits a photocopy of the Fall/Winter 1999 issue of *Kabbalah*. This publication identifies the beneficiary as the managing editor; she is also credited with "Advertising Sales."

The director instructed the petitioner to submit additional information, including "a detailed description of the work to be done" and "a listing of the beneficiary's employment history," including all positions that the beneficiary has held within the petitioning organization.

In response, [redacted] states that the previously-submitted introductory letter, quoted above, contained a "detailed work history." This history consists of part of a single paragraph; her activity since 1992 is summed up in a single sentence. [redacted] also states that the beneficiary's resume is attached, but the document labeled as the beneficiary's resume is not arranged in the usual resume format. It is, instead, a half-page prose narrative. It reads, in part: "With a goal of converting the complex wisdom into understandable, easy to use, visually beautiful tools, [the beneficiary] developed the first-ever Kabbalah magazine devoted entirely to Kabbalah. In conjunction with her duty as managing editor of the magazine she helps to grow the book publishing division of the Kabbalah Centre – Kabbalah Publishing."

[redacted] asserts that "the beneficiary is responsible for selecting and preparing religious material for publication. Confer with the editorial staff to establish production schedules and solve religious publication problems. Read and evaluate religious material submitted for publication consideration. [redacted] states

that the beneficiary's duties are religious in nature because she "is engaged in editing religious material pertaining to Kabbalistic teachings, holy scrolls, holidays, and Jewish way of life."

The director denied the petition, stating "[t]he beneficiary's duties do not appear to relate to a traditional religious function." On appeal, counsel observes that the beneficiary is responsible for the publication of entirely religious content. We note that the list of qualifying religious occupations at 8 C.F.R. § 204.5(m)(2) includes "religious broadcasters," who disseminate religious material to the public. A publisher of religious material would appear to perform a comparable function. As managing editor, the beneficiary would be largely responsible for the publication's content, as opposed to, say, a typesetter or printer who performs a secular task unrelated to the content of the publication.

Given the available information, we conclude that the beneficiary's position can be considered a qualifying religious occupation. We therefore withdraw the sole stated ground for denial of the petition.

That being said, we note an evidentiary deficiency which, if not remedied, would prevent the approval of the petition. This deficiency did not figure in the director's denial, and therefore the petitioner did not have the opportunity to address it on appeal. 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 18, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an editor of religious publications throughout the two years immediately prior to that date.

The only direct evidence in the record to show that the beneficiary has acted as a managing editor is a photocopied issue of *Kaballah* from 1999. This falls outside the qualifying period, and thus it does not show that the beneficiary acted in that capacity between June 2001 and June 2003. The director must provide the petitioner with the opportunity to submit published materials from 2001-2003, showing that the beneficiary was credited as a managing editor at that time. Contemporaneous internal documentation relating to the beneficiary's editing tasks would also be very valuable in this regard.

If the petitioner did not produce published materials during the qualifying period, that would explain the absence of such materials from the record, but it would also mean that the beneficiary could not have been acting as an editor during that time because there would have been nothing to edit.

We note that, according to the petitioner, the beneficiary works for room and board rather than for a monetary salary. This arrangement qualifies as "employment" pursuant to *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982), but the petitioner must still demonstrate (rather than merely claim) that it provided these considerations to the beneficiary. Demonstrating the existence of a residential facility does not establish who lived there.

We further note that the submitted issue of *Kaballah* is dated "Fall/Winter 1999." Because the publication is dated not by day or month, but by two seasons, the implication is that *Kaballah* is published only twice a year (a Spring/Summer issue and a Fall/Winter issue). The petitioner must show that the beneficiary has been *continuously* engaged as a religious editor throughout the qualifying period. If the magazine appears only twice a year, the burden is on the petitioner to show that the preparation of each issue entails six months of

full-time editorial work. Because, at present, the record does not show that the petitioner published the magazine at all, further evidence is clearly necessary in this regard.

The petitioner has submitted printouts from its web site, http://www.kaballah.com. These printouts show that the petitioner offers various books for sale. These works would entail additional editorial activities, but the petitioner still must demonstrate (rather than simply claim or assert) that the beneficiary was the editor involved. Again, the beneficiary's editorial work would presumably result in some kind of "paper trail" of contemporaneous documentation.

In short, the petitioner has not established that the beneficiary continuously acted as an editor from June 2001 to June 2003. The director must give the petitioner the opportunity to remedy this deficiency. We note here that, pursuant to 8 C.F.R. § 103.2(b)(2)(i), the non-existence or other unavailability of required evidence creates a presumption of ineligibility. The cited regulation specifies the terms by which secondary evidence will be accepted in lieu of primary evidence, and by which sworn witness affidavits (not unsworn letters) will be accepted in lieu of secondary evidence.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.