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

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 03 092 51881 Office: CALIFORNIA SERVICE CENTER Date: OCT 1 3 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

PUBLIC COPY

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 appeal will be dismissed.

The petitioner is a multidenominational Protestant 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 its coordinator of training and computer lab. The director determined that the petitioner had not established that the position relates to a traditional religious occupation, or that the petitioner is a qualifying tax-exempt religious organization.

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 first 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) offers the following pertinent definitions:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.
>
> *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.

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" but it 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.

Further, while the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within 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 petitioner's director of Academic Technology, describes the beneficiary's position:

> [The petitioner] has established an Academic Technology Center and a Training and Computer Lab, the purpose of which is to provide and develop technological, instructional media support and training for [the petitioner's] faculty, staff and students in their pursuit of academic degrees in the fields of Theology, Missiology and Christian based Psychology, to better enable them to work as pastors, minister[s], missionaries and Christian psychologists. . . . [T]he technology, instruction, training and media support and development offered has a uniquely instructional and theological focus, and a direct role in furthering the Christian faith. . . .
>
> [The beneficiary] has worked for [the petitioner] in the religious worker position of Coordinator of Training and Computer Lab . . . for well over two years. . . . During this period he has implemented training programs for theology students, tutors, and teachers; he has assisted the Director of Academic Technology in providing and developing technological instructional media, and support and training for the seminary as a whole and its theology students in particular; and he has supervised staff in support of faculty, staff and students. . . .
>
> In this position [the beneficiary] will continue to have the responsibility of coordinating and supervising staff in the production of instructional multimedia presentation and related technical training and support of faculty, staff and students. He will continue to assist the Director of Academic technology [sic] in providing and developing technological instructional media support and training.

provides an itemized list of the beneficiary's tasks, including supervision of training assistants, management of "a multimedia production office," and directing "the daily operation and maintenance of the computer lab." These tasks, as described, appear to be entirely secular. continues:

> Due to the theological focus of the presentation materials developed and the research and other technical tools utilized by the position, [the petitioner] requires the incumbent to have a religious work background, whether in ministry, missions or Christian higher education. . . .

> All students, faculty and staff of [the petitioning seminary] are required to sign a Statement of Faith and to uphold the principles of that faith in their work environment.

[redacted] states that the beneficiary is an ordained minister, as shown by a copy of an ordination certificate dated April 1995. The duties described, however, are not the duties typically reserved for authorized clergy, and the petitioner acknowledges that the beneficiary is not employed in the capacity of a minister.

The director requested additional information to establish the religious nature of the position. In response, the petitioner submits a letter from [redacted] director of Academic Technology (apparently [redacted] successor). [redacted]

> Our graduates go on to become missionaries, pastors, educators and Christ-based psychologists. To this end the Coordinator of Training and Computer Lab plays a vital role. He will develop and maintain the technological infrastructure that supports the process of Christian theological teaching and learning at a seminary level; assist the faculty with the presentation of their classroom material – all of which is of a Christian/religious nature; train faculty, students and staff in the software used in Biblical studies and religious research; and create an environment in the computer lab that is conducive to theological studies. In addition, the incumbent is required to have a strong Christian ethic in the manner in which he/she performs his/her duties. In addition to his other duties, [the beneficiary] will be required to supervise lab staff in Christ-like fashion; lead staff meetings in prayer; resolve conflicts in accordance with Biblical principles; participate in bi-weekly chapel meetings; and lead worship and devotion at the annual staff retreat.

[redacted] does not explain why the previously submitted job description did not mention prayers, worship or devotion. It appears that the faculty members take turns in leading prayer sessions; this seems more likely than permanently (and arbitrarily) assigning those functions to the coordinator of training and computer lab. More generally [redacted] above comments address the religious atmosphere of the petitioning institution, rather than establishing that the beneficiary's position is, itself, particularly religious in nature.

The director denied the petition, stating "[t]he 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." On appeal, counsel asserts that the beneficiary's "work directly relates to the religious instruction offered by [the petitioner] to its students . . . and is entirely aimed at enabling and facilitating such instruction." Counsel adds "consideration must be had to the context in which such work is performed, and the subject to which the work relates."

We agree that context is important, but context is not always sufficient to transform an inherently secular activity into religious work. The beneficiary is not, himself, an instructor in religious subjects. Counsel maintains that teaching religious subjects is a traditional religious function, and that the beneficiary's activities relate to that function. In some sense, the printing of textbooks and, for that matter, building parochial schools "relates to" religious education, but this does not mean that printers and construction workers plausibly qualify as religious workers. We must consider not only *whether* the beneficiary's work relates to a traditional religious function, but also *how* it so relates.

The petitioner has not shown that the beneficiary is responsible for creating religious content, or that the beneficiary's essential job functions are inherently or predominantly religious. Rather, the beneficiary plays a

supporting role, providing the means for presentation of religious content created by others. The beneficiary's own familiarity with religious subject matter is clearly an asset in his performance of his job, in that it gives him an understanding of the type of content with which the students will be working, but it does not follow that a secular worker could not perform the same core functions, or that the position of the coordinator of training and computer lab relates in any straightforward way to a traditional religious function.

The beneficiary is responsible not for religious education, but for technical training in the use of computers, as highlighted by the fact that the beneficiary trains not only students, but also faculty members. Certainly, the beneficiary is expected to adhere to a religion-based code of conduct while employed by the petitioner, but the same goes for "[a]ll [the petitioner's] students, faculty and staff," according to Scott Clark (quoted above). On appeal, counsel readily acknowledges that the petitioner does not claim that all of its employees qualify as religious workers.

Upon consideration, based on the above, we affirm the director's finding that the petitioner has not established that the beneficiary's position as coordinator of training and computer lab qualifies as a religious occupation.

The other 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, on appeal, 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." Such a letter would appear rather definitively to settle the issue of whether the Internal Revenue Service considers the petitioner to be a "religious organization." Supporting the letter is ample other documentation in the record, which establishes the pervasively religious nature and purpose of the petitioning entity. (Obviously, this is not to say that every employee of a pervasively religious institution qualifies as a religious worker.)

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.