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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 28 2005
WAC 03 100 51669

IN RE: Petitioner:
Beneficiary: [redacted]

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a pastoral assistant. The director determined that the petitioner had not established that the position qualified as that of a religious worker.

On appeal, counsel submits a brief and 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 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 alien must be coming to the United States at the request of the religious organization to work in a religious occupation. 8 C.F.R. § 204.5(m)(1).

The petitioner provides the following description for the proffered position:

> Assist in formal and informal programs of the church as missionary and pastoral assistant, to include: dissemination of Christian doctrine through Korean-language Bible study, leadership in prayer meeting, private and small group Korean-language instruction to persons seeking conversion to Christian faith; upon assignment by pastor, provide Gospel-based counseling to ill or trouble members of congregation; regular assistance to pastor

> during worship services; active planning and orientation to introduce new members to the Christian faith, generally from the Korean-speaking local population, through religious outreach activities, distribution of Korean-language evangelical literature, special religious speaking engagements, etc; all activities are assigned and supervised by pastor.

The petitioner stated that the position requires no formal education or religious training or experience but that individuals are "selected based on the individual Congregation's appreciation of their religious commitment, knowledge, and general competency to discharge the job duties."

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.

Citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972), the director determined that the unsupported statement from the petitioner was insufficient to meet its burden of proof.

On appeal, counsel states that the director's approval of two previous petitions for nonimmigrant religious workers as pastoral assistants are precedent and that the denial of the current petition is arbitrary and an abuse of discretion. Counsel's argument is without merit.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

On appeal, the petitioner submits a letter from the General Secretary of the Korean American Presbyterian Church, [redacted] According to [redacted]

> A pastoral assistant shall be nominated by the pastor and invited by the congregation to assist the pastor, if the pastoral assistant is judged. The choice of a pastoral assistant by a pastor should be a decision of faith. This decision is based upon a sense of God's call, upon an appraisal of talents, interest, and commitment, upon the appropriateness of the work to serve

> god's purposes, and upon the belief that it is part of the goodness of creation. A pastoral assistant shall be directed in his or her work by the pastor in conjunction with the congregation.

We find that the position is recognized and defined by the petitioner's governing body and that the evidence is sufficient to establish that the position qualifies that as a religious worker within the meaning of the statute and regulation.

We reject counsel's argument, however, that as the position is listed in the Department of Labor's Dictionary of Occupational Titles as a religious occupation, it is perforce a religious occupation that must be accorded recognition by CIS. Merely assigning a position a title that, on the surface, indicates it is religious occupation as defined elsewhere does not raise that position to the level of a religious occupation within a specific denomination. The petitioner must establish that a particular position qualifies as a religious occupation within its denomination.

The evidence establishes that the proffered position is a religious occupation within the meaning of the regulation.

Nevertheless, the case may not be approved as the record now stands, and it will be remanded to the director to enter a new decision.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The record reflects that the beneficiary was approved for an R-1, nonimmigrant religious worker, visa to work for the petitioner in September 2000. The record also reflects that the petitioner compensated the beneficiary as a nonemployee, issuing him a Form 1099-MISC to document his earnings.

The statute requires that an alien must be seeking entry into the United States to work for a bona fide religious organization. That requirement is not met when the individual is self-employed as the self-employed individual works for him/herself. Therefore, self-employment is not qualifying employment for the purpose of this employment based visa preference classification.

On remand, the director should address whether the petitioner has established that it has extended a qualifying job offer to the beneficiary.

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, if adverse to the petitioner, is to be certified to the AAO for review.