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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 28 2005
WAC 02 244 50104

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

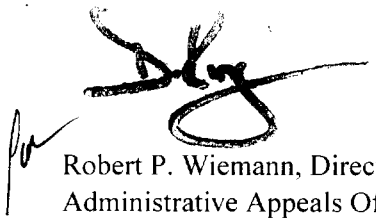
PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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 appeal will be dismissed.

The petitioner is an "inter-denominational religious organization." 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 information and communications systems. 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).

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.

According to the petitioner, the duties of the proffered job would include:

> applying [the] principle[s] of information systems and web database programming to plan, design and develop courseware and distance learning program[s] for our ministry of religious education via multimedia and on-line services such as Web Page and Internet; evaluating and discussing course outline, goals and development with faculty to define most efficient and effective way of using modern technology to facilitate and enhance

> religious study; using technology of management information systems and experience and knowledge with church organization structure and systemized architecture for church management to establish and maintain [the petitioner's] database; designing, setting up and managing website for [the petitioner] in order to make available information about our organization and our ministries, serve people in need of our ministries, network with other churches and religious organizations and spread the Gospel.

In response to the director's request for evidence (RFE) dated November 14, 2002, the petitioner stated that, in the proffered position, the beneficiary worked 40 hours per week, and that his duties were allocated as follows: planning, designing and developing courseware and the distance learning program – 8 hours; working with the faculty to define the most efficient and effective use of modern technology to facilitate religious study – 8 hours; establishing and maintaining the petitioner's database – 8 hours; managing the petitioner's website – 8 hours; and producing and editing video clips "to evangelize to the people" – 8 hours.

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.

On appeal, counsel asserts that the beneficiary's work with the petitioner involves "more than providing information and computer technical services which is only the means to promote the end of spreading the Gospel." Counsel states further that the proffered position is, in effect, that of an "information missionary."

Counsel submits a "declaration" from the petitioner's general manager, , who states that the beneficiary was hired as a religious information missionary and that he is responsible for coordinating and communicating religious information via computer systems. states that the beneficiary's job duties include "drafting Gospel message[s] for the purpose of training pastors and recruiting disciples; attending . . . board meetings, assisting in prayer ministry and in praise and worship and participating in the discussion about the church's religious direction." further states that the beneficiary is "in charge of videotaping, web design, and producing Gospel messages which he forwards to [the petitioner's] members, pastors and seminaries with his own inspiring Gospel message across the world."

Counsel also submits a "declaration" from the beneficiary who states that his "intent was and is to be a Christian information missionary who advocates the Gospel of Jesus Christ with the aid of my education in computer science and my training in praise and worship ministry." The beneficiary's summary of his duties echoes that of As evidence of these duties by the beneficiary, counsel submits a copy of what purports to be a forwarding letter from the beneficiary for four CDs, including one by the beneficiary. A copy of the beneficiary's CD, mentioned in the letter, is also submitted on appeal. Counsel also submits copies of music scores apparently written by the beneficiary and copies of pages from the petitioner's website, one in English and one in Chinese. The photograph on the pages is identified as that of the beneficiary. The page in English appears to be a welcome by the beneficiary to visitors of the petitioner's website.

It is of note that the petitioner did not indicate prior to the appeal that the beneficiary was considered to be an "information missionary" or that his job duties included "drafting Gospel message[s] for the purpose of training pastors and recruiting disciples; attending . . . board meetings, assisting in prayer ministry and in praise and worship and participating in the discussion about the church's religious direction." It is also significant that the petitioner's most recent summary of the beneficiary's duties does not include any reference to the planning, designing and development of courseware and the distance learning program or working with the faculty to facilitate religious study, which, according the petitioner's original submissions, consumed a significant amount of the beneficiary's work schedule.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

On appeal, counsel likens the proffered position to that of a religious producer or religious broadcaster, positions he states have been recognized as religious occupations in prior CIS decisions. Counsel has not, however, established by sufficient evidence that the main focus of the beneficiary's work is more than the dissemination of information through the upkeep and maintenance of the petitioner's website or the audio recording of others, with an occasional contribution by the beneficiary. The duties of the proffered position appear to be no more than that indicated by the job title, coordinator of information, rather than the more creative responsibilities of a religious producer or broadcaster.

Counsel also asserts on appeal that CIS has already recognized the position as a religious occupation in its prior approval of an I-129, Petition for Nonimmigrant Worker, for the beneficiary. 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).

While it appears that some of the duties associated with the proffered position are religious in nature, the petitioner has not established that the position is not primarily secular in nature.

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.