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

PUBLIC COPY

[redacted]

JAN 25 2005

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 02 043 54254

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]

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 Director, Vermont Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's summary dismissal will be withdrawn and the appeal will be dismissed on its merits.

The petitioner is an institution of the Seventh-day Adventist 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 literature evangelist. The director determined that the petitioner had not established that (1) the beneficiary had the requisite two years of continuous work experience as a literature evangelist immediately preceding the filing date of the petition; (2) the position qualifies as a religious occupation; or (3) the beneficiary would not be dependent on outside employment or solicitation of funds for support.

The petitioner's initial appeal submission contained no substantive arguments or evidence. Instead, counsel indicated that a brief was forthcoming. The AAO summarily dismissed the appeal on September 23, 2003, because the record, at that time, contained no further submission. On motion, the petitioner demonstrates that a supplemental brief was timely filed, which somehow failed to reach the record of proceeding prior to the adjudication of the appeal. We therefore withdraw the summary dismissal, and address the appeal brief on its merits. The brief does not include any new evidence, nor does it incorporate any reference to such evidence, and therefore we consider the brief itself to represent the entire submission on appeal.

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).

Lori Williams, the petitioner's director of Human Resources, states:

> [The beneficiary] is currently serving as a Literature Evangelist for our Church. . . . He has served with the Seventh-day Adventist Church in the United States since his entry on

> November 29, 1996. Since that date, he has continuously served our Church in the United States as a Literature Evangelist. . . .
>
> The Literature Evangelist plays an integral and important role within the Church. This position entails outreach work in the community, making missionary visits to people's homes and strengthening health and character through Bible study, education, personal counseling, prayer and Adventist reading materials. This position is a full time position and ministry of the Church that is dedicated to spreading the gospel of Jesus Christ. This position does not include fund raising or solicitation of donations. The Church believes that the work done by the Literature Evangelists is missionary work of the highest order.

The first issue concerns 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 November 16, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a literature evangelist throughout the two years immediately prior to that date.

While Ms. asserts that the beneficiary has continuously worked as a literature evangelist for well over two years, the petitioner's initial submission contained no evidence of the beneficiary's past work. The director requested copies of payroll and tax records and other evidence to establish that the beneficiary worked as claimed.

The petitioner's response indicates that literature evangelists are required to submit "weekly reports" documenting their service. The petitioner neither submits these reports, nor explains their absence. The petitioner did not submit payroll or tax documents to establish the beneficiary's earnings during the qualifying period.

Ms. states that the church employs many literature evangelists, but not all of them qualify as "Regular Literature Evangelists." *The North American Division Working Policy for 1998-1999* states: "[a] regular literature evangelist is certified by the employing organization. Service time is based upon 40 hours per week or 168 hours per calendar month and is computed on a year of 10 months, or a minimum of 1,680 hours, this being aggregate time of at least 40 reports per annum." Regular literature evangelists, in turn, are ranked either "Beginner," "Licensed," and "Credentialed," in ascending order of experience. Ms asserts that the beneficiary "has earned the status of a Credentialed Literature Evangelist." While the record contains copies of various certificates, there is no documentation to confirm the beneficiary's claimed status as a credentialed literature evangelist.

The director denied the petition, in part because the petitioner failed to document the beneficiary's claimed continuous employment during the two-year qualifying period. On appeal, counsel repeats that claim that the petitioner "has served the Church since his entry in 1996." The director had previously requested documentary evidence (such as payroll and tax records) to support this claim, and the petitioner's response to that request included no such evidence, even though the petitioner asserts that literature evangelists submit weekly reports which ought to document their work in detail. On appeal, counsel does not even acknowledge this request, much less explain the petitioner's inability or unwillingness to comply with it. We note that,

because the director has already requested this evidence and the petitioner failed to submit it prior to the denial, no future submission of this evidence will be considered in reference to this petition. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The next issue concerns the nature of the position offered to the beneficiary. 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.
>
> *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.

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 initial submission offered little information about the beneficiary's job duties. The director, therefore, requested a detailed description of the beneficiary's work, and evidence to show that the beneficiary's position relates to a traditional religious function.

In response, Ms [redacted] asserts that the beneficiary's position is a religious occupation, religious vocation, and "equal to that of a minister." Absent evidence of a binding commitment such as vows, we cannot deem the beneficiary to be in a religious vocation. Church doctrine, which states that a literature evangelist "occupies a position equal to that of the gospel minister," does not demonstrate that the positions are interchangeable; only that the positions are (in the words of early church leader [redacted] in Letter 186, 1903) "as important as preaching." The petitioner has not shown that the beneficiary is authorized to perform, or actually does perform, the functions of clergy within the petitioning denomination. The beneficiary's work clearly does not fall within the regulatory definitions of "minister" or "religious vocation." We turn, therefore, to the question of whether a literature evangelist works in a religious occupation.

The petitioner has submitted copies of certificates, showing various courses that the beneficiary completed in the 1980s. The beneficiary was ordained as a deacon in 1995 and an elder in 1996. These documents show

that the beneficiary holds various positions within the Seventh-day Adventist Church, but they explain little about the nature of his work.

In response to a request for a copy of the beneficiary's daily schedule, the petitioner has submitted brochures from conventions and gatherings. These documents detail the activities of these special gatherings, but not the beneficiary's routine daily duties.

The director denied the petition, stating the petitioner has not shown that the duties of a literature evangelist relate to a qualifying traditional religious function. The director also stated that the record does not corroborate the claim that the beneficiary is a credentialed literature evangelist (i.e., the actual "credentials" are not reproduced in the record).

On appeal, counsel states that the petitioner "asserts that the position of Literature Evangelist as offered to the beneficiary is within the definition of 'Minister' and Religious Occupation as defined by the Act." Because the regulatory definitions of "minister" and "religious occupation" are, essentially, mutually exclusive, we cannot accept the petitioner's position. The petitioner has not established that literature evangelists have the authority to perform the duties typically reserved for authorized clergy, and there is no evidence in the record to suggest that the beneficiary is a "minister" for immigration purposes.

Counsel argues that the beneficiary's duties are beyond the typical volunteer functions of "the laity." While it is true that literature evangelists are paid workers rather than volunteers from the congregation, this alone is not sufficient to establish that these workers engage in a religious occupation. The regulatory definition of "religious occupation" makes it clear that not every church employee holds a qualifying occupation. That definition specifically "does not include . . . fund raisers, or persons solely involved in the solicitation of donations."

Ms. [redacted] has claimed that the beneficiary's "position does not include fund raising or solicitation of donations," but the beneficiary's remuneration is on a commission basis, tied to the sales of books and other publications and tracked by regular sales reports. The published materials, in turn, appear to be health-related rather than explicitly religious in content.

Counsel maintains that the beneficiary's "position does not include fund raising or solicitation of donations," and asks the AAO to consult "the previously enclosed Audited Financial Statement." The cited statement indicates that most of the organization's income derives from sales of published materials. For instance, in 2000, Review and Herald Publishing Association (of which the petitioner is a subsidiary) sold $27,664,550 worth of books and magazines, and took in $1,590,925 from other sources (mostly advertising, royalties, and "Conference/Union Appropriations"). Thus, sales represent over 94% of the petitioner's gross revenues in 2000 (the last year for which the petitioner has provided figures). We cannot conclude that literature evangelists, who are directly responsible for generating nearly all of the petitioner's income through sales and whose income is contingent on sales volume, are not engaged in fundraising.

The petitioner asserts that literature evangelists are missionaries, who pray and discuss religion in addition to their efforts to sell books and magazines. The petitioner has not, however, shown that the beneficiary receives any compensation at all for prayer and discussion. Rather, the beneficiary's income appears to derive entirely from sales-based commissions. Because the sales are the income-generating activity, other activities pursued by the beneficiary do not appear to constitute an occupation. Also, the petitioner has shown that an individual's status within the hierarchy of literature evangelists is not permanent, but is, rather, contingent on performance as measured in "weekly reports."

The regulations specifically exclude fund raisers from the definition of "religious occupation." Because the beneficiary seeks a secular benefit from the United States government, those regulations necessarily supersede any internal church doctrine regarding the importance of literature evangelists.

On a point relating to the nature of the position, 8 C.F.R. § 204.5(m)(4) requires the petitioner to provide "documentation [that] should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support." M tates: "[w]e expect [the beneficiary] to earn $350.00 per week plus bonuses. He will continue to work at least and in excess of 40 hours per week. He will not require any other employment to support himself." The director stated that the petitioner has not established that the beneficiary will not require outside employment to meet basic expenses. Counsel, on appeal, does not address this finding by the director.

The statute and regulations require the petitioner to establish that an alien minister will work solely as a minister in the future, but there is no such requirement for non-ministerial religious workers. The regulation cited above does not entirely prohibit future outside employment, provided that the beneficiary will not be *solely* dependent on outside employment. The same regulation, however, requires that the beneficiary not be solely dependent on solicitation of funds. As noted above, the beneficiary is essentially a salesperson, whose compensation is based on sales commissions and whose principal duty appears to be procuring funds for the petitioner through those sales.

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.