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U.S. Citizenship
and Immigration
Services

JAN 26 2005

[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

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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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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/Bible teacher. 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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation 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.”

According 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.

In his letter accompanying the petition [REDACTED] the petitioner's senior pastor, listed the duties of the proffered position as:

1. Assist the Pastor on the Sabbath and in Sabbath School teaching, collection of offerings, and distribution of wine and bread for the celebration of the Lord's Supper;
2. Visit church members who are not able to attend Church services because of age, sickness, or handicap or who reside in the nursing and convalescence homes;
3. Prepare for baptism Korean nationals in the United States who are interested in becoming Seventh-Day Adventists;
4. Preparing Korean food for Sabbath attendees and the elderly and ill; and
5. Perform other religious duties as needed by the Pastor.

Reverend [REDACTED] further stated that in this position, the beneficiary "will assist the Church in its core mission of teaching the twenty-seven Fundamental Beliefs of the Church . . . and will strengthen the Church's Sabbath School activities."

In response to the director's request for evidence (RFE) dated March 27, 2003, Reverend [REDACTED] submitted an affidavit in which he expanded upon the duties performed by the beneficiary in the proffered position. In that affidavit, Reverend [REDACTED] stated:

As a primary component of her current employment . . . [the beneficiary] serves as superintendent for the Adult Sabbath School. In this position, [she] plans for the smooth and effective operation of the school and teaches weekly Sabbath School lessons. She serves the church as administrator of all divisions of the Sabbath School. She prepares and organizes all the Sabbath School programs, welcoming new attendees, ensuring an emphasis on mission work, taking offerings for Sabbath School expenses, and administering and leading Bible studies. Specifically, [she] teaches one Sabbath School Lesson each Sabbath, and assists me in preparing lessons and readings for Tuesday evening Bible study classes.

The petitioner also submitted a copy of an excerpt from the *Seventh-day Adventist Church Manual*, which describes the functions and duties of the Sabbath School superintendent. We note that while the petitioner describes the Sabbath School superintendent duties as a primary component of the beneficiary's job in the proffered position, this particular role was not mentioned in the initial list of job duties.¹ 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Service (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

¹ On appeal, counsel appears to acknowledge that the duties of Sabbath School superintendent were added subsequent to the filing of the visa petition when he states, "She now serves as Sabbath School Superintendent, assisting the Pastor and directing the selection of religious instruction materials."

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).

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.

Beyond the list of duties outlined by Reverend [REDACTED] the petitioner submitted no other evidence, such as a job description or work schedule, of the duties of the proffered position. The record does not contain evidence of the "other religious duties" that the pastor may assign and no evidence of the time the beneficiary spent or will spend in performing them. The list of duties outlined by Reverend Lee in his initial letter and the evidence submitted do not adequately establish that the position offers full time employment.

Further, although the petitioner submitted evidence that the position of Sabbath School superintendent is recognized and defined by the Seventh-day Adventist Church, it does not provide similar evidence of the position of pastoral assistant/bible teacher. While the duties of this position may relate to a traditional religious function within the petitioner's denomination, the petitioner provided no evidence that the position is one that is traditionally a permanent, full-time, salaried occupation within the denomination.

On appeal, the petitioner submits an affidavit from Reverend [REDACTED] in which he states that the beneficiary's "full-time duties . . . are duties traditionally performed by salaried church employees, and not by unpaid volunteers." The petitioner, however, provided no evidence that this position existed in the petitioning organization prior to the beneficiary assuming the duties, or that the position exists as a permanent, full-time, salaried position in other Seventh-day Adventist churches. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The evidence is insufficient to establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

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.