

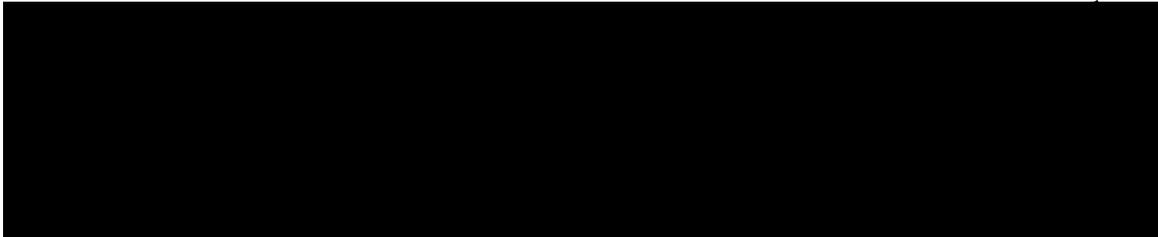
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

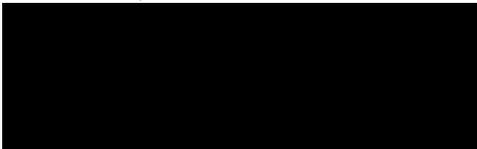


FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 18 2005
WAC 03 176 53702

IN RE: Petitioner: [redacted]
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:



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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a church and its affiliated publishing house. 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 religious art producer. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

On appeal, the petitioner submits copies of documents establishing the religious significance of Orthodox icons.

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 sole issue in contention is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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 regulation 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.

Very Reverend Father David G. Barr, pastor and CEO of the petitioning organization, describes the beneficiary's position:

Ever since September 30, 1999, [the beneficiary] has been employed with us on a fulltime basis as a Religious Art Producer. As such, he makes reproductions of Orthodox religious art to produce sacred icons, which are distributed to Orthodox churches, organizations and private persons in the U.S. and abroad. He also acts as liaison, translator and principal agent to import religious books and art calendars from Romania to resell in the United States.

Following a request for further evidence about the position, counsel states: "The person fulfilling that position had to demonstrate not only excellent technical woodshop skills, but also to perform the work observing the religious requirements of the Orthodox Church for those producing icons. Icons require those special observances because they are an integral part of orthodox public and private worship and prayer."

The petitioner submits a photocopied excerpt attributed to *The Orthodox Study Bible*, discussing the place of art in Orthodox worship:

[F]or the Orthodox, art is not icing on the cake; it is something very central to what we know of how God has revealed Himself to us. One goes into an Orthodox Church building and is immediately surrounded by all sorts of things that appeal to the senses. . . . None of these is understood to be merely accidental or a frill. Rather, they are at the heart of our experience in the Church as the people of God.

Documentation in the record establishes a substantial volume of work produced by the petitioner, indicating that the beneficiary's iconographic work is a primary focus of his job, rather than an occasional duty that is subordinate to administrative functions such as arranging importation of foreign-made products.

The director denied the petition, stating: "The beneficiary's duties do not appear to relate to a traditional religious function but rather suggest a secular occupation. Although art can be a component of many religious denominations, there is no inherent requirement that a person involved as a Woodworking craftsman/manager must be a member of the petitioner's denomination."

On appeal, Fr. Barr states:

It is our firm contention that this position requires someone who must be a member of the Orthodox Church – and not just any member of the Church could do this work, but only one who is engaged and immersed in the spiritual life of the Church. . . .

In all the history of Conciliar Press' production of icons and other liturgical goods, they have hired Orthodox Christians to produce these liturgical items. Conciliar Press has, in fact, hired employees who are not members of the Orthodox Church in various clerk and managerial positions. These positions do not necessitate the employee being a member of the Orthodox Church. But the person preparing the icons needs to be a practicing member of the Orthodox Church. . . .

Most, if not all, Orthodox jurisdictions within the United States require that all icons used within the church be prepared by approved iconographers. . . . Part of the approval process is found in the iconographer being an Orthodox Christian in good sacramental standing in the Church. There is a significant aversion to having just "any" commercial artist provide items for parishes.

Fr. Barr quotes numerous sources that discuss the religious importance of iconic art within Orthodox Christianity (including entire books on the subject), and submits copies of the relevant excerpts cited. These scholarly religious works demonstrate that Orthodox Christian iconography is not simply a matter of decorating the church, but rather it is integral to the Orthodox worship experience. The icons themselves are viewed as holy objects, rather than mere pictorial representations of saintly individuals or religious events.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.