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U.S. Citizenship
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Services



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 02 2005

IN RE:

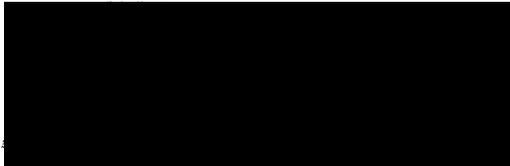
Petitioner:



Beneficiary:

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:



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.

Mai Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied this employment-based immigrant visa petition on May 13, 2004. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a school. 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 teacher. The director determined that the petitioner had not established that the position qualified as that of a religious worker.

On appeal, counsel submits 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 issue on appeal is whether the petitioner established that the position qualified as that of a religious worker.

Pursuant 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 as a religious worker. 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).

In its letter of November 3, 2003, the petitioner stated that the proffered position is that of instructor/IT administrator and student association advisor. The petitioner listed the duties of the position as follows:

1. Lead out in daily student worship
2. Teach four (4) computer classes
3. Maintain the school computer network
4. Help the Student Association officers plan and lead activities for the school year. These Activities include religious retreats, weeks of spiritual emphasis, evening vespers worship programs, as well as wholesome secular activities on Saturday evenings and special outings . . .
5. Serve on a faculty team to supervise the campus during the evening hours . . .
6. Meet with the Administrative Council to plan upcoming spiritual or secular school events, consider academic items, and handle disciplinary concerns
7. Be available to advise students with regard to academic, spiritual, physical, social, familial, or other matters
8. Confer with parents regarding students' academic, social and religious progress
9. Coach girls' volleyball teams and instill Christian ethics and sportsmanship
10. Supervise student workers in department
11. Attend church services with the students

The petitioner stated that the position will be compensated at the rate of \$40,798 per school year and that the employee is expected to work a minimum of 40 hours per week.

In its letter of November 3, 2003, the petitioner stated that Seventh-day Adventists maintain their own school systems, from pre-school through university. The qualifications for the position include membership in the Seventh-day Adventist Church, and a valid denominational teaching certificate which includes graduation from Seventh-day Adventist educational institutions.

While the petitioner limits selections of its teachers to those belonging to the Seventh-day Adventist Church, and while some of the duties of the proffered position are religious in nature, the duties of the position are primarily secular or administrative in nature.

On appeal, counsel asserts that the beneficiary's computer classes are religious-based: "For example, [the beneficiary] teaches the students to use power point on the computer to give sermons and religious presentations for their mission trips. He also teaches the students how to use the computer and Internet to research religious subjects." Although the petitioner states that "[s]tudents prepare sermons along with visual presentations," most of the statements made by counsel are unsupported by the evidence of record. Without documentary evidence to

support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, counsel submitted no evidence that teaching a student to prepare power point presentations or to do research through the Internet requires knowledge unique to the petitioner's faith and religious creed.

The evidence does not 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.