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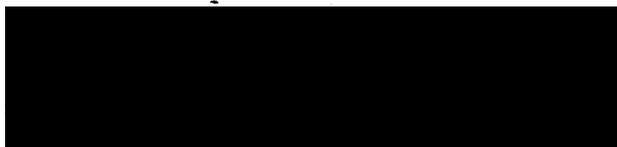
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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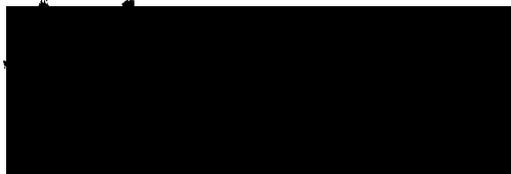
Office: VERMONT SERVICE CENTER

Date: MAR 11 2005

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:



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

The petitioner publishes *The Christian Science Monitor*. 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 syndication and secondary sales specialist with the electronic version of the newspaper. The director determined that the petitioner had not established that the position qualified as that of a religious worker.

On appeal, counsel submitted 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).

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 its letter of September 3, 2002, the petitioner stated that, in the proffered position:

[The beneficiary] manages the daily production of news feeds for electronic syndication of *The Christian Science Monitor* . . . and the day-to-day relationship with syndication partners and clients. He participates as a full member of the team responsible for the ongoing quality of the E-monitor site, including its look, feel, and functionality. Job requirements include production experience in journalism or a related field where the maintenance of a production schedule is

demanded. In addition . . . he also promotes the sale of *Science and Health with key to the Scriptures* and other products, through hands-on selling and engaging in conversations on spirituality.

The petitioner also stated that the position of syndication and secondary sales specialist “is a direct link in the missionary outreach effort of The Mother Church,” and that in the position, the beneficiary, “must have a strong and supportive understanding of the Church’s mission, purpose, and organization, as he meets with the general public, newspaper staff, vendors, and other Church Center departments.”

In response to the director’s request for evidence (RFE) dated April 22, 2003, the petitioner stated that the duties of the position, as performed by the beneficiary, were allocated as follows:

1. Manages the daily production of *The Christian Science Monitor* News Service and electronic syndication of *The Christian Science Monitor* (19 hours per week).
 - Creates and transfers data streams for the *Monitor*’s web site [REDACTED].com’ and produces the daily download inter-phase for *The Christian Science Monitor* News Service.
 - Personally converts and feeds data to publishing vendors and is accountable for the quality and accuracy of such feeds
 - Maintains day-to-day technical relationships with current syndication vendors and news service clients.
 - Continually seeks ways to automate and streamline data transfer functions.
2. Manages day-to-day business relationships with syndication partners and vendors (12 hours per week)
 - Maintains contractual oversight of syndication partners. Tracks account receivables and provides periodic revenue reports.
 - Assists in negotiation of new and renewal vendor contracts.
 - Identifies new revenue opportunities in syndication and recommends appropriate action.
 - Provides syndication partners with ongoing information to assist them in increasing sales. This includes new editorial content and marketing tools and approaches.
3. Participates as a full member of the team responsible for the ongoing quality of the *Monitor*’s web site [REDACTED].com’, including its look, feel and functionality (6.5 hours per week)
 - Maintains active awareness of changes in technology.
 - Performs other duties as assigned.

The director stated that the petitioner had not established that the proffered position required specific religious training and, therefore, had not established that the position qualifies as that of a religious worker. We withdraw this statement by the director.

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.

Further, while the determination of an individual’s status or duties within a religious organization is not under the purview of 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).

In his letter accompanying the RFE, counsel asserted:

The traditional religious function of The Mother Church . . . is the promotion and extension of the religion of Christian Science . . . Any work for the Church that relates to that traditional religious function qualifies as religious work under the provisions of 8 CFR sec. 214.2(r)(2) entitled “Religious occupation,” except work under the same section that is specifically excluded.

Counsel cites no statutory or precedential case law to support his expansive reading of the regulation. We note first that the petitioner is applying for a preference visa under section 204.5(m)(1) of the Act. Therefore, section 204.5(m)(1) is the controlling regulatory provision. The regulation does not state that all jobs other than the ones listed are considered to be religious occupations or that the enumeration of nonreligious positions is intended to be a comprehensive list. It is obvious that the list is meant to provide examples of positions that are clearly not religious occupations for the purpose of the statute and regulation, similar to the enumeration of occupations that are recognized as clearly relating to a traditional religious function.

Counsel also asserts that CIS has recognized the proffered position as that of a religious worker by approving a Form I-129, Petition for a Nonimmigrant Worker, on behalf of the beneficiary to work in the same position.

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).

The duties as outlined by the petitioner indicate that the proffered position is primarily secular in nature. Although the petitioner initially asserted that the position involved selling products including engaging in “conversations on spirituality,” these duties were not included in the specifics of the beneficiary’s workweek that the petitioner submitted in response to the RFE. Assuming that these duties were inadvertently omitted, the evidence still reflects that the position is primarily secular in nature.

The petitioner has not established that the proffered position is a religious occupation within the meaning of these proceedings.

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.