

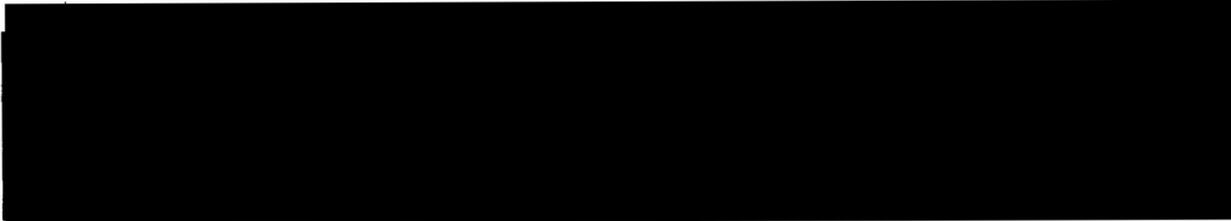
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

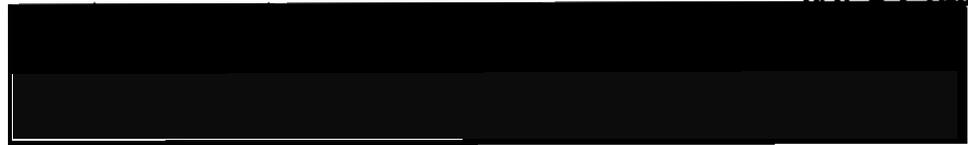
PUBLIC COPY

C



FILE: EAC 04 080 50517 Office: VERMONT SERVICE CENTER Date: APR 24 2007

IN RE: Petitioner:
Beneficiary:



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.

Mauro Deadnick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The petitioner has filed a motion to reopen and reconsider before the director, and an appeal before the Administrative Appeals Office on appeal. The motion will be dismissed as moot. The appeal will be sustained and the petition will be approved.

The petitioner is the central office Puerto Rico for the Jehovah's Witnesses denomination. 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 translator. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits a brief and additional evidence.

Simultaneously with the appeal, the petitioner has filed a motion to reopen and reconsider (receipt number EAC 06 029 51218). The regulations do not establish any procedure by which a petitioner may file an appeal and, at the same time, a separate motion to reopen or reconsider. The regulation at 8 C.F.R. § 103.5(a)(1)(ii) states that jurisdiction over a motion generally rests with the official who made the latest decision in the proceeding – here, the Director, Vermont Service Center. By filing an appeal, however, the petitioner placed the proceeding under the jurisdiction of the AAO, pursuant to 8 C.F.R. § 103.3(a)(1)(iv). Because, for this type of proceeding, the AAO has appellate authority over the Service Centers, AAO decisions must supersede Service Center decisions. Under these circumstances, it would serve no useful purpose for the director to render a new decision on motion while a separate appeal is pending. Furthermore, once the AAO has rendered a final decision on an appeal, any motion filed prior to the AAO's decision becomes moot. Also, of course, there exists the chance that the director's decision on motion may conflict with the AAO's decision on appeal. The adjudication of the petition must follow a single uninterrupted thread; it cannot branch off into two simultaneous and possibly conflicting proceedings. For all of these reasons, a petitioner cannot "hedge its bets" by filing a motion with the director and, at or near the same time, an appeal with the AAO.¹ The petitioner's motion is hereby dismissed. The materials submitted on motion will remain part of the record.

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,

¹ We acknowledge that 8 C.F.R. § 103.3(a)(2)(iii) permits the director to treat an appeal as a motion under certain circumstances, but in this instance, the petitioner has not requested that the appeal be considered as a motion. Rather, the petitioner has submitted two separate filings – one as a motion, and one as an appeal.

(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 on appeal 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.

Citizenship and Immigration Services 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.

In a letter accompanying the initial filing of the petition, [REDACTED] President of the petitioning organization, stated:

In order to properly disseminate the “Word of God” throughout the earth, Jehovah’s Witnesses are involved in translating and producing Bibles and Bible-based religious publications in over 300 languages. To properly oversee the translation of this literature into the Spanish language on May 9, 1993 our branch, here in Puerto Rico, was officially designated as the Spanish Translation Center for Jehovah’s Witnesses. . . .

[The beneficiary] initially received a special training for a period of twelve months in the Translation Department. Additionally, all members of the Translation Department receive specialized training.

[REDACTED], Legal Representative of the Jehovah’s Witnesses’ office in Madrid, stated that the beneficiary “was ordained as a minister” in Spain on March 5, 1988.

On March 7, 2005, the director requested “evidence that the beneficiary’s primary duties . . . require specific religious training beyond that of a dedicated and caring member of the congregation or body. The evidence

must establish that the job duties are traditional religious functions above those performed routinely by other members.” In response to this request, counsel stated: “One of the requirements to be a Religious Translator for the petitioner is that the person must be an ordained minister of the organization.” Counsel cites no evidence to support this claim. Witness letters describe the beneficiary as an ordained minister and a translator, but they do not indicate that the former is a necessary condition for the latter. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We note that, on appeal, Mr. [REDACTED] states: “At the time that a Witness is inducted or baptized, he is considered an ordained minister by the Jehovah Witnesses religion.” If every baptized Jehovah’s Witness is “considered an ordained minister,” then counsel’s claim may be technically true, but only because the term “ordained minister” seems to be almost universally applicable within the denomination.

The petitioner submitted descriptions of the translation and interpretation course, involving such elements as “How Dictionaries Can Help” and “Reviewing the Translated Text.”

The director denied the petition on October 3, 2005. The sole stated ground for denial was that the beneficiary’s “past and proposed duties do not require specific religious training, therefore, [the position] does not qualify as a religious occupation.”

On appeal, Mr. [REDACTED] argues that the Jehovah’s Witnesses denomination recognizes the position of a religious translator as a religious occupation, routinely employed within the denomination. The very existence of a Translation Department supports this assertion. Mr. [REDACTED] correctly notes that religious translators are among the examples of qualifying occupations cited in the regulatory definition of “religious occupation” at 8 C.F.R. § 204.5(m)(2).

Mr. [REDACTED] asserts that the beneficiary’s position requires special training, but, more fundamentally, he argues that the “formal religious training” requirement has no valid basis in law. After careful and prolonged consideration of this issue, the AAO finds that the “training” issue has received a disproportionate amount of weight in adjudications of special immigrant religious worker petitions. Obviously, when a given position clearly requires specific training, 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the alien possesses that training; but the issue of training should not be a primary factor when considering the question of whether that position relates to a traditional religious function. Of greater importance is evidence showing that churches or other entities within a given denomination routinely employ paid, full-time workers in comparable positions, and that those positions do not embody fundamentally secular tasks, indistinguishable from positions with secular employers.

From the above discussion, we would be entirely justified in finding that the beneficiary’s proffered position of religious translator is a qualifying religious occupation in his denomination. Other materials in the record, however, lead us to a different finding (albeit one that still results in the approval of the petition).

Mr. [REDACTED] in his initial letter, had described working and living conditions that indicate that the beneficiary’s work is closer to a religious vocation than a religious occupation:

Jehovah's Witnesses' Central office in Puerto Rico, known as "Bethel," . . . has offices and three residence buildings to accommodate the 132 religious workers, who permanently live and perform their religious work there. All these 132 workers are members of a full-time religious Order under a vow of poverty. . . . Among these workers, there are 25 who are assigned to the Spanish Translation Department. . . .

After an applicant is admitted to the religious Order he needs to pass through an additional seventeen-week course. . . . Also, all members of the religious Order engage in 20 presentations and seminars regarding Bible interpretation. None of the members of our religious Order are permitted to work outside of the Order. . . .

[A]fter a period of one year, [the beneficiary] was invited to become a permanent member of the religious Order to work in the Spanish Translation Department. Therefore, on September 10 of 2001, [the beneficiary], along with his wife, was accepted as a permanent member of the [REDACTED] Family" where he continues serving as a member of a Religious Order under a vow of poverty, working as a translator of religious texts in the Spanish Translation Department. . . .

[The beneficiary] is a member of our religious Order under a vow of poverty, and as such, he does not receive either a salary or remuneration, however, the petitioner provides for all of [the beneficiary's] needs as well as for his wife. . . . A comprehensive staff of local licensed professionals including, but not limited to, medical, legal, and dental specialists care for all of these individuals. In addition, [REDACTED] services include meals, laundry, dry cleaning, clothing alterations, shoe repair, hairdressing, counseling, physical therapy, and chiropractic care.

The record contains a translated copy of the beneficiary's "Affirmation of [REDACTED] Family Vow," indicating that the person taking the vow pledges "[t]o be submissive to the theocratic arrangement at Bethel" and "[t]o accept meals, lodging and expense allowance the same as all other members of the [REDACTED] family." Although Mr. [REDACTED] had stated "None of the members of our religious Order are permitted to work outside of the Order," the vow requires only that members "abstain from employment without permission" and "turn over to the common treasury all income received from any work" thus undertaken. The vow does not clearly indicate what limits, if any, exist regarding permissible employment. For instance, it is not clear whether members may, with permission, perform secular work for secular employers unconnected to the church. In any event, there is no indication that this beneficiary has engaged in such employment.

[REDACTED] Ugarte indicates that the beneficiary and his spouse receive nearly \$22,000 per year in benefits "as members of our religious Order," including housing, meals, utilities, and other necessities.

8 C.F.R. § 204.5(m)(2) defines "religious vocation" as a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Here, the beneficiary has taken the vows of a religious order. Also, he receives no salary, but instead resides in a religious community that meets all of his material needs. Mr. [REDACTED] has referred to this arrangement as "permanent." In short, the beneficiary's situation within the church appears to show all the hallmarks of a

religious vocation, as opposed to a religious occupation. We find, therefore, that the beneficiary has engaged and continues to engage in a religious vocation, under vows to the Jehovah's Witnesses denomination. The director having cited no basis for denial except relating to the nature of the beneficiary's work, we find that the petitioner has overcome the sole stated ground for denial.

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 decision of the director denying the petition will be withdrawn and the petition will be approved.

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