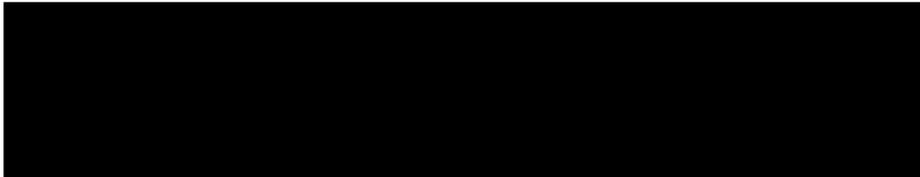


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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: **MAR 13 2007**  
EAC 05 132 53146

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:  
[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.

2 Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a Coptic Orthodox Christian 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 religious counselor. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, counsel argues that the beneficiary's position meets the regulatory requirements of a religious occupation.

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 only fully articulated issue in the director's decision is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers this definition:

*Religious occupation* means 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.

Adel Soliman of the petitioner's Board of Deacons lists the beneficiary's duties as a religious counselor:

- counseling elderly church members on any religious, health and financial, issues which they may be experiencing
- planning and conducting various religious activities of the church members such as courses, gatherings and meetings.
- meeting and praying daily vespers with elderly church members
- prepare and distribute religious reading material
- provide any necessary religious counseling to those in need.

Adel Soliman adds that the beneficiary "will also visit ill or otherwise shut-in members of the church and counsel those in need." A 2005 certificate from the Beni-Suef Archbishopric for Orthodox Copts states that the beneficiary "is well trained for the services required by the aged."

The director instructed the petitioner to submit further evidence to demonstrate that the beneficiary's position qualifies as a religious occupation. In response, counsel observes that 8 C.F.R. § 204.5(m)(2) (quoted above) lists religious counselors among the examples of qualifying religious occupations. Counsel is correct about the regulatory definition, but the nature of the duties, rather than the job title, is of primary importance. Therefore, beneficiary "religious counselor" title is not *prima facie* proof of eligibility.

The director denied the petition, stating that the petitioner submitted "no corroborating documentation which clearly establishes that the proposed position is a traditional religious occupation, requiring special training."

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.

The beneficiary's position, as described by the petitioner, does not appear to entail pervasively secular functions. Religious counseling can, as the regulatory definition acknowledges, relate to a traditional religious function. It remains, now, to show that the Coptic Orthodox denomination traditionally regards this function as the

occupation of a paid church employee rather than an occasional duty delegated to volunteers from the congregation. If the task is traditionally a volunteer function, and the petitioner has fashioned it into a paid occupation solely or largely for the purpose of helping the beneficiary to secure immigration benefits, then the function is not a *bona fide* religious occupation.

Relating to this line of logic, the director's decision contains a paragraph consisting of a single sentence: "The record contains no evidence to indicate that a position for a full-time religious worker exists in your religious organization." The director's prior request for evidence did not address this issue, and the appearance of this single sentence, without elaboration, in the denial does not present a clear idea of what kind of evidence the director would expect with respect to the job offer. If the director intends to pursue this avenue of inquiry, the director must give a clearer indication as to the types of evidence required in this regard. For instance, the petitioner has not shown that Coptic Orthodox churches routinely employ paid, full-time religious counselors. The director should afford the petitioner an opportunity to provide objective, documentary evidence show that these paid positions exist within the denomination. Such objective, documentary evidence might take the form of denominational publications and/or evidence showing that the petitioning church regularly employed a full-time religious counselor between its 1984 founding and the beneficiary's stated arrival in 2000.

In a related vein, beyond the director's decision, we note that the petitioner has not adequately demonstrated the beneficiary's past religious work during a crucial two-year period. 8 C.F.R. § 204.5(m)(1) requires 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on April 7, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious counselor throughout the two years immediately prior to that date.

We note that the petitioner has filed several petitions on the beneficiary's behalf since 2003. The petitioner asserts that the beneficiary has worked for the petitioning church since 2000. At no point, however, has the petitioner produced any documentary evidence of the beneficiary's claimed employment at the church, such as pay records or tax documents. Furthermore, the petitioner has indicated that the beneficiary's last entry into the United States was in December 2004, only a few months before the filing date. Because a lengthy absence from the United States would constitute a disqualifying interruption of the beneficiary's work at the petitioning church in New York, the director should instruct the petitioner to account fully for the beneficiary's whereabouts and activities throughout the 2003-2005 qualifying period. For periods where the beneficiary was not physically at the petitioning church, the petitioner should produce evidence from the site(s) where the beneficiary was working at the time. This issue bears further inquiry, in keeping with 8 C.F.R. § 204.5(m)(3)(iv), which permits the director to request appropriate additional evidence in appropriate cases.

Another issue beyond the director's decision that relates to compensation pertains to 8 C.F.R. § 204.5(g)(2), which instructs the petitioner to establish the intending employer's ability to pay the beneficiary's proffered wage of \$1,000 per month. The regulation requires that this evidence shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. The petitioner has submitted an unaudited

financial statement from well before the filing date, and monthly income/expense breakdowns which indicate that the petitioner lost money nearly every month in 2004, ending that year with a net loss in excess of \$110,000. The itemized year-end expenses do not appear to include the beneficiary's proffered salary. If the petitioner has been paying the beneficiary the proffered wage, evidence of those payments ought to exist. If the petitioner has not been paying that wage, and it suffered six-figure losses in 2005, then the petitioner must submit further evidence, under 8 C.F.R. § 204.5(g)(2), to establish that it has been, and remains, able to pay the beneficiary's full wage ever since April 2005.

The director's sole basis for denial, as stated in the denial notice, does not withstand appellate scrutiny. If the petitioner is able to overcome all of the other issues listed above, and no other issues surface upon review of the petition, then the director should approve the petition. If, however, the petitioner cannot provide persuasive evidence that (1) Coptic Orthodox churches routinely employ full-time, paid counselors; (2) the beneficiary has worked on a paid, full-time basis continuously since April 2003; and (3) the petitioner has been and remains able to pay the beneficiary \$1,000 per month, then the petition is not approvable and should be dismissed.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.