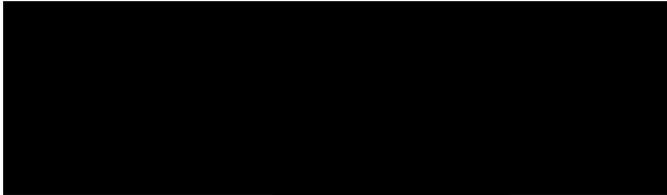


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Office: CALIFORNIA SERVICE CENTER

Date:

OCT 16 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a "Christian evangelical missionary organization." 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 publications editor. The director determined that the petitioner had not established the position qualifies as that of a religious worker or that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, asserts that the director's decision is arbitrary and unreasonable and conflicts with the evidence submitted. Counsel submits a brief in support of the appeal.

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 first issue on appeal is whether the petitioner has established that the position qualifies as that of 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, which is defined at 8 C.F.R. § 204.5(m)(2) as follows:

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 (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.

In its October 12, 2006 letter accompanying the petition, the petitioner stated that its "mission is to promote Christianity and the Christian way of life," and in order to do so, it publishes, among other things, a newsletter.

The newsletter provides religious information for members, and missionary information for those who are contemplating becoming a Christian. Our organization also publishes books, magazines and other publications. In order to produce our newsletter and other periodical publications, we need the services of a religious editor.

The petitioner stated that the beneficiary had held the position of religious publications editor in an R-1 non-immigrant status for over four years.

In a request for evidence (RFE) dated December 11, 2006, the director instructed the petitioner to:

Submit a job offer in the form of a letter from the authorized official of the religious organization in the United States. The letter must include the beneficiary's job title, a **detailed description** of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty, and how the beneficiary will be paid for services. **Include the terms of payment for services or other remuneration.** Also, include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in original.]

In its February 28, 2007 response, the petitioner stated that the beneficiary had been its religious publication editor since July 2001, and that in that capacity:

[H]er weekly duties include compiling, formatting, editing and translating religious written materials. Her duties also include weekly review of various religious periodicals, as well as editing, proofreading and designing the layout of the seminary journal "The Spring of Life". [She] is also designing and editing posters and flyers for various seminary activities and preparing and editing devotional materials for the religious holidays, including pamphlets, brochures and flyers.

In a second RFE dated April 10, 2007, the director again sought information regarding the religious nature of the proffered position, asking the petitioner if it employed, or had employed in the past, other religious publications editors. The petitioner did not address the director's questions in its response. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). On that basis alone, the petition may not be approved.

The director determined that the majority of the beneficiary's work is secular in nature, and that the petitioner had not submitted evidence that the duties of a religious publications editor relate to a traditional religious function.

On appeal, counsel asserts:

[T]he decision of the Center Director is arbitrary and unreasonable by saying that the occupation of editor of a missionary newsletter is not a religious occupation. The regulations cited at 8 C.F.R. 204.5(m)(2) defines a religious occupation as one which "relates to a traditional religious occupation" and includes, but is not limited to, such occupations as "missionaries" and "religious broadcasters". The position offered is indeed a missionary position as the purpose of the missionary organization's newsletter is to proselytize and carry out the religious mission of this Evangelical Christian organization. Also, since the newsletter is in the print medium, it can be said to be similar to that of a religious broadcaster, and that she would perform similar functions as a religious broadcaster, but in the print medium rather than by broadcasting.

Nonetheless, as the petitioner failed to adequately respond to the director's RFE, it failed to provide sufficient information for the director to determine that the proffered position is that of a religious worker as outlined by the regulation. As the director noted, the petitioner stated that it publishes books, magazines, and "other publications" in addition to its newsletter. The petitioner did not indicate that the beneficiary was solely responsible for editing all of its publications, and did not respond to the director's questions regarding other individuals who hold, or may have held, the position of religious publications editor. Additionally, counsel appears to indicate that the beneficiary's only editing responsibility involves the newsletter, which contradicts the information provided by the petitioner, who stated that the beneficiary edited the journal "The Spring of Life," published by its seminary. The petitioner provided two copies of this publication; however, the documents, which appear to be a newsletter, are in Chinese and are not accompanied by an English translation. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The petitioner failed to provide a detailed description of the beneficiary's work, including who she supervised or who supervised her, as requested by the director in each RFE.

Accordingly, the petitioner's evidence does not establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

The second issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section

101(a)(27)(C) special immigrant religious worker.” The regulation indicates 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on October 12, 2006. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted copies of Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, showing that it paid the beneficiary wages of \$21,600 in 2005, and a copy of a “Statement of Salary and Deductions” for May 2006, showing that the beneficiary received gross pay of \$1,800. The petitioner stated that the beneficiary “lives on the Church’s campus, and her housing is subsidized.” The petitioner also stated that the beneficiary had worked as a religious publications editor under an R-1 visa for four years; however, it provided no documentation to corroborate the beneficiary’s employment in 2004. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In her December 11, 2006 RFE, the director instructed the petitioner to:

Provide evidence of the beneficiary’s work history for the years 2004, 2005 and 2006. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer’s name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner resubmitted a copy of the beneficiary’s IRS Form W-2 for 2005, and submitted a copy of the IRS Form W-2 for 2004 and 2006, indicating that it paid the beneficiary wages of \$19,100 and \$20,700, respectively. The petitioner also submitted copies of the beneficiary’s IRS Form 1040EZ, Income Tax Return for Single and Joint Filers with No Dependents, for 2004 and 2005, and copies of “Statement of Salary and Deductions,” indicating that it paid the beneficiary \$1,800 for December 2006 and \$1,980 for February 2007. The petitioner outlined the beneficiary’s duties as “compiling, formatting,

editing and translating religious written materials,” and “review of various religious periodicals, and editing, proofreading and designing the layout of the seminary journal.” The petitioner also stated that the beneficiary “design[ed] and edit[ed] posters and flyers for various seminary activities, and prepar[ed] and edit[ed] devotionals materials for the religious holidays.” The petitioner did not provide a detailed work schedule as requested by the director.

In her second RFE in April 2007, the director again requested specifics regarding the beneficiary’s work schedule and emphasized in bold letters that the petitioner was to “include a schedule that provides the time of day and detailed description of the exact duties performed for each hour of the work day throughout the entire week.”

The petitioner’s response included a March 1, 2007 letter from its treasurer, certifying that the beneficiary had been employed full time with the organization since July 2001, and another copy of its February 28, 2007 letter outlining the beneficiary’s duties. It again failed to provide a detailed work schedule as requested by the director. As discussed previously, the regulation at 8 C.F.R. § 103.2(b)(14) provides that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (1990).

Section 101(a)(27)(C)(iii) of the Act provides that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term “continuously” also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, counsel asserts that “Evidence was submitted in the form of W-2 forms for 2004, 2005, and 2006 to demonstrate that the beneficiary did have more than 2 years experience in the religious occupation.” Counsel further asserts that the beneficiary has been in an R-1 status for “the past 5 years in the same religious occupation.”

However, evidence of the beneficiary’s approval for work in a religious occupation is not evidence that the beneficiary was actually engaged in the religious work. Additionally, evidence that the beneficiary was paid is not conclusive evidence that she was engaged in qualifying religious work nor is it evidence that she worked full time. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner failed to adequately respond to the director’s request for additional information. Further, the petitioner has submitted insufficient evidence that the position qualifies as that of a religious worker. Therefore, the evidence therefore does not establish that the beneficiary worked in a qualifying religious occupation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the IRS is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization that contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a copy of a July 21, 1992 letter from the IRS granting it tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) as an organization described in section 509(a)(2) of the IRC. Section 509(a)(2), refers to organizations that are private foundations which

- (A) normally receives more than one-third of its support in each taxable year from any combination of –
 - (i) gifts, grants, contributions, or membership fees, and
 - (ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business.

Therefore, the letter from the IRS does not indicate that the petitioner's section 501(c)(3) tax-exempt status is based on the religious nature of the organization. Accordingly, the burden of proof is on the petitioner to establish that its classification derives primarily from its religious character. The petitioner can do this pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine it is a tax-exempt religious organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for Citizenship and Immigration Services (CIS), *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to submit the documents listed above. The content of those documents must establish the religious purpose of the organization.

The petitioner submitted a copies of pages from its website, a copy of a brochure describing its building project, and copies of its publication "Spring of Life Monthly." The petitioner did not submit a copy of IRS Form 1023 or a copy of its organizing instrument. Therefore, the petitioner has failed to establish that the petitioner is a bona fide nonprofit religious organization.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit

sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.