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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAR 16 2012**

Office: CALIFORNIA SERVICE CENTER

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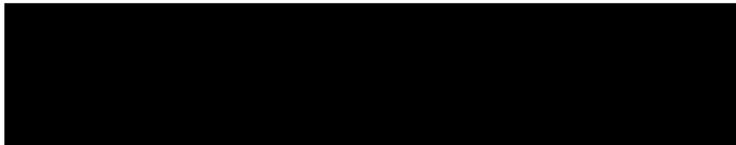
IN RE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a Baptist preschool and elementary 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 an operations director. The director determined that the petitioner had not established that the position qualifies as that 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, 2012, 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, 2012, 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 has established that the position qualifies as that of a religious occupation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines religious occupation as an occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

██████████ is a school associated with the Baptist Church in the United States. In an August 28, 2009 signed letter submitted with the petition, the petitioner stated that the beneficiary began working there as its operations director in March of 2006. The letter discusses the beneficiary's responsibilities such as overseeing the center's operations as well as the development of spiritual and educational activities for the center's children in the Baptist religious tradition. Specifically, the letter delineates her duties such as supervising learning and Bible study schedules; coordinating admissions, attendance, and tuition policies; orchestrating Christian educational activities; managing staff members; coordinating Christian development programs; and engaging in project development, budgeting, and scheduling with the ██████████

In a separate signed letter dated August 11, 2009 and submitted with the petition, the petitioner emphasized that the beneficiary's position would serve as a platform to teach children and bring them closer to God. Again, the petitioner highlighted the beneficiary's responsibilities in the areas of supervision, development, planning, management, and coordination.

With the petition, the petitioner submitted copies of its 2008-2009 Parent Handbook and its affiliated church's constitution adopted in 1988. The handbook reflects that the preschool-aged children only engage in approximately 15 minutes of religious activities each day and that the school-aged children do not engage in any such activities on a regular basis. The constitution reveals that the purpose of the ██████████ is to advance the Christian faith by teaching about Christ and by promoting the spiritual welfare of members. However, the record of proceeding shows that the petitioner's school is a separate and distinct entity from the church. The ██████████ constitution specifically states that the youth department is not part of the church's Sunday school. Neither the ██████████ youth department or Sunday school appears to be related to the petitioner's organization other than for the overall goal of educating children in the Christian faith. Accordingly, due to the secular nature of the beneficiary's duties for the school, the director determined that the position of operations director for the school was not a traditional religious function.

On appeal, counsel asserts that the beneficiary's position was instead religious in nature. Counsel again discusses the petitioner's handbook and the [REDACTED] constitution. Counsel states that all instruction provided by the petitioner's school is based upon faith-based teaching in the rich Baptist religious tradition. The AAO finds that the petitioner and counsel have failed to demonstrate that the majority of the beneficiary's duties are religious in nature rather than secular.

The AAO notes that the primary issue in this case is whether the petitioner's denomination recognizes the position as a religious occupation. Counsel attempts to connect the religious nature of the position of operations director to the religious functions of the denomination by stating that the position is part of faith-based teaching. The AAO notes that the [REDACTED] Constitution includes a description of the position of a church school superintendent, but it does not include the beneficiary's position of operations director. Accordingly, the AAO finds that counsel's statements regarding the religious nature of the beneficiary's position are unsupported by documentary evidence within the record of proceeding. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner stated in both its August 11, 2009 and August 28, 2009 letters of support accompanying the petition that the position of operations director is a "professional religious occupation requiring an individual who is a Baptist." The petitioner's statements, without any documentary support, such as official documents from its organization headquarters, are not persuasive. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Furthermore, the AAO notes that the petitioner has failed to establish that only those of the Baptist faith are qualified to work as an operations director. If the school will even *consider* non-Baptist applicants for the position of operations director, the question immediately and inevitably arises as to why Baptist operations directors should receive an immigration benefit, but non-Baptist operations directors should not. Thus, the record of proceeding does not support the petitioner's claims that being a member of this particular denomination is a religious requirement of the beneficiary's job as an operations director.

The AAO finds that the petitioner has failed to submit evidence that the position of operations director is a recognized occupation within the Baptist Church. Further, the duties do not clearly involve inculcating or carrying on the religious creed and beliefs of the Baptist Church. The beneficiary's specific duties, while related to the religious education of students, primarily include implementing and overseeing admissions; managing attendance and tuition policies; recruiting, supervising, and evaluating staff; engaging in project development; and overseeing the budget. The beneficiary's administrative duties required by her position far outweigh any religious function.

In support of this finding, the AAO notes the petitioner's 2007 Internal Revenue Service (IRS) Form 990 indicates that Biblical application constitutes only 20% of the petitioner's organizational

purpose. This information does not support a finding that the beneficiary's non-secular duties are limited and merely incidental to the overall religious functions, but rather the converse; her religious functions are incidental to her administrative duties.

Counsel additionally contends that USCIS should have provided the petitioner with a fair opportunity to rebut the adverse determinations it made, which led to an unfavorable adjudication of the petition. The regulation at 8 C.F.R. § 103.2(b)(8) clearly states that a petition shall be denied "[i]f there is evidence of ineligibility in the record." The regulation does not state that the evidence of ineligibility must be irrefutable. Where evidence of record indicates that a basic element of eligibility has not been met, it is appropriate for the director to deny the petition without a request for evidence (RFE). If the petitioner has rebuttal evidence, the administrative process provides for a motion to reopen, motion to reconsider, or an appeal as a forum for that new evidence. In the present case, the evidence indicated that the position did not qualify as that of a religious worker as it was not based on a traditional religious function. Accordingly, the denial was appropriate, even though the petitioner might have had evidence or an argument to rebut the finding.

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 met that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.