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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 03 260 52057 Office: CALIFORNIA SERVICE CENTER Date: APR 18 2005

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.

Robert P. Wiemann

S Robert P. Wiemann, Director
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 on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a church affiliated with the Living Stream Ministry (LSM), which in turn is described as “a non-profit religious organization formed to advance a fundamentalist view of the Christian faith.” The petitioner 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 instructor and religious translator. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position sought immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the position qualifies as a religious occupation.

On appeal, counsel asserts that the grounds for denial are arbitrary and unsupported by the record or by the pertinent regulations.

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 concerns the beneficiary’s past work. The regulation at 8 C.F.R. § 204.5(m)(1) 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.” 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 September 16, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious instructor and translator throughout the two years immediately prior to that date.

Dr. Richard Scatterday, elder of the petitioning church, states that the beneficiary "has already been continuously performing the religious duties . . . under 'THE OFFERED POSITION', since at least July 2001 to the present time. . . . See copies of his cancelled paychecks." The earliest paycheck, from August 2001, was issued by "Southern California Campus Work / The Church in Anaheim," P.O. Box 5151, Anaheim, California. Subsequent checks were issued by "The Church in Anaheim / Southern California Campus Work" at the same mailing address.

The director requested further evidence of the beneficiary's work history, including payroll documentation "such as W-2 forms." The petitioner responded by submitting copies of Forms 1099-MISC, showing that the petitioner paid the beneficiary \$19,200.00 in "nonemployee compensation" in 2002. The beneficiary's 2002 income tax return shows this same amount under "Gross receipts and sales" under Schedule C, Profit or Loss from Business. The beneficiary identified his "Principal business" as "religious translator for Church in Anaheim, CA."

The director, in denying the petition, stated that the petitioner had failed to establish that the petitioner is the same entity that had issued the "Southern California Campus Work" checks. We note that Francis D. Ball signed the checks in question. A church directory submitted with the initial filing associates Francis Ball with the physical address of the petitioning church, and Francis D. Ball's name appears in the petitioner's articles of incorporation. We are satisfied that the petitioner, or a subsidiary component thereof, issued the paychecks. This would also explain why the petitioner is in possession of copies of the canceled checks.

The director also observed that the petitioner issued Form 1099-MISC, and not Form W-2, and that the beneficiary had reported the petitioner's payments as business income rather than as wages. The director concluded that, therefore, the beneficiary was not "employed in the conventional sense." The director asserted: "the evidence of record is not convincing enough to show that the beneficiary's services for the petitioner as a non-employee instead of an employee would encompass the same level of responsibilities and duties as that of an employee hired in the conventional sense."

On appeal, counsel calls the director's reasoning "quite anomalous and arbitrary," given that the petitioner has proven that it compensated the beneficiary at the proffered rate during the qualifying period. Counsel contends "a W-2 form in itself provides no more information than a 1099 form . . . as to the nature and level of the beneficiary's responsibilities which, anyway, have already been fully described by the petitioner."

We concur with counsel with respect to the beneficiary's compensation, and the means by which the petitioner and the beneficiary reported such compensation to the Internal Revenue Service. The evidence shows that the petitioner compensated the beneficiary for services rendered, and we, like counsel, are unable to see why the petitioner's reporting of this compensation on Form 1099 instead of Form W-2 reflects, in any discernible way, on the beneficiary's duties or responsibilities.

We withdraw the director's finding that the petitioner has failed to establish the beneficiary's prior work in the proffered position.

The remaining issue 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.

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 regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services 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.

Dr. Scatterday describes the position offered to the beneficiary:

The religious worker position being offered to [the beneficiary] is Religious Translator for approximately 60% of his working time and Religious Instructor for approximately 40% of his working time. . . .

Religious Translator Duties:

We require our Religious Translators to use their knowledge of the Bible and the writings of Watchman Nee and Witness Lee to translate religious subject matter from English into Spanish in a way that will convey the religious concepts of these two ministers of God's word as accurately and effectively as possible. . . .

Oral translation duties are performed at different locations. Sometimes, the translation is broadcast from the church over the radio waves. . . . Other times, oral translations are performed for conferences or training sessions held in other cities or states. . . .

Written translation duties are performed with the help of a library and specialized software to translate the very diverse religious-related written materials published by our church. . . . These written materials to be translated include outlines of messages and lessons, announcements of church events, our weekly Church News bulletin . . . and publications of LSM, especially material for their publication called "The Holy Word for Morning Revival" which provides bible verses and a message for every day of the year. This publication is crucial for the daily church life our church strives to encourage among its members. . . . The worker, for his part, needs constantly to consult with LSM translators and editors on translation issues.

Religious Instructor Duties:

Participate in Coordination Meeting[s] . . .

Attend a gathering with all those wanting to be involved with the work among our young people. . . .

Make phone calls and personal visits to more than 20 junior high boys and their parents to organize at least one home meeting for the boys. . . .

Prepare lesson to be given to the whole junior high group of boys and girls on Lord's Day morning or prepare the reading material and the attendance and rewards charts. . . .

Coordinate by phone with other servers and/or parents to encourage our young people to attend the meeting.

The director instructed the petitioner to "explain how the duties of the position relate to a traditional religious function." The director did not specify who should, or should not, provide that explanation. In response, Dr. Scatterday states: "The duties of the position clearly relate to a traditional religious function because the beneficiary, as a Religious Translator, must convey the religious concepts of Watchman Nee and Witness Lee into Spanish language as accurately and effectively as possible to spread their word, and as Religious Instructor he is essentially performing missionary-type functions."

The director denied the petition, stating: "the statement from the Elder of the [petitioning] church . . . is insufficient to entirely satisfy the burden of proof. . . . The petitioner failed to submit verification of its claims from a Superior or Principal of the denomination in the United States." The director concluded: "The beneficiary's duties do not relate to a traditional religious function," but the director did not explain or elaborate.

On appeal, counsel protests that the director had not previously indicated that the petitioner's own description would not suffice, or that the explanation of the beneficiary's duties therefore had to come "from a Superior or Principal of the denomination." Counsel adds that the beneficiary's duties, already described in detail, conform to the regulatory definition of a religious occupation. The regulations also indicate that much of the initial evidence should be in the form of a letter from an official of the entity that seeks to employ the beneficiary, in which case the assertions of Dr. Scatterday should carry significant weight unless there is reason to question the credibility or reliability of those assertions.

The beneficiary is responsible for translating not only mundane or everyday church documents, but also foundational or seminal writings that shape and define the identity of the employing religious organization. The beneficiary's work as a religious instructor also bears consideration, as the work of a paid employee rather than a part-time volunteer whose involvement is limited to Sunday school classes one day per week. While some of the beneficiary's individual duties (such as translation of church bulletins) would not, in isolation, constitute qualifying religious duties, the sum of the beneficiary's responsibilities appears to conform to the functions contemplated in the regulations' use of the terms "religious instructor" and "religious translator." We therefore withdraw the director's finding that the beneficiary's duties do not qualify as the duties of a religious occupation.

Because the director's stated grounds for denial fail to withstand appellate review, and because examination of the record reveals no other readily apparent basis for denial of the petition, the director's decision to deny the petition cannot stand.

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 appeal will be sustained.

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