

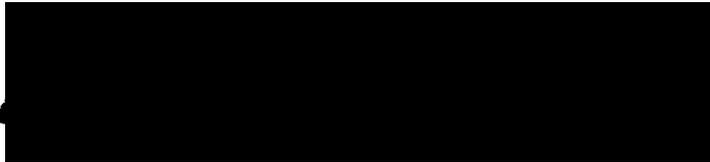
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



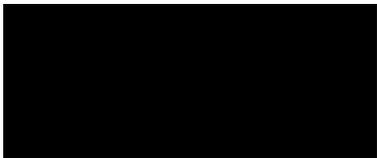
CI

FILE: EAC 03 178 51037 Office: VERMONT SERVICE CENTER Date: AUG 24 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:



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, Director
Administrative Appeals Office

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

The self-petitioner seeks employment with a “a non-profit organization that services as the central coordinating agency for American and Canadian Orthodox Jewish Congregations” to perform services as a producer, director and editor of religious educational films in order to be classified 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). The director determined that the self-petitioner had not established that the position qualifies as a religious occupation.

The self-petitioner, through counsel, submits a timely 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 sole issue to be determined is whether the employing organization seeks to employ the self-petitioner 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 self-petitioner must establish that the specific position that is offered qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a “religious occupation” and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term “traditional religious function” and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant

classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. 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.

██████████ Administrative Director of the employing organization, states that it is "producing, directing, and editing religious educational videos" and that this position is a "traditional religious function." Mr. ██████████ describes the position:

The *Orthodox Union's* Educational Video Division was created to provide a more comprehensive Jewish religious education to its audience. This division has produced Jewish educational videos including religious instruction on Kosher food and Jewish Rabbinical life as well as Jewish Orthodox rituals.

The director instructed the self-petitioner to provide additional evidence to establish that the position offered qualifies as a religious occupation for immigration purposes. The director also requested evidence relating to the "specific religious training" the beneficiary received. In response, the self-petitioner submitted a letter from Rabbi ██████████ Executive Director of Programs for the Orthodox Union, which provides greater details regarding the duties performed by the self-petitioner in his position. ██████████ states that the self-petitioner has "many duties working in his capacity as Producer, Director and Editor of religious educational video" and describes such duties as follows:

As a Producer, [the self-petitioner] conducts interviews, including discussion with our Rabbis regarding the religious content of the video and how to communicate the religious material most effectively. As a Director, during the video production, he directs camera operation, oversees the compiling of archival footage for a particular project, and selects religious music. As an Editor, he puts together an editing script, edits the raw footage, creates titles, graphics and special effects and sound mix. In the final production stage, [the self-petitioner] then works closely with our Rabbis to ensure that the religious content of the video is accurate...Sixty percent of [the self-petitioner's] time is spent on production and postproduction of the videos, twenty percent on directing and twenty percent in editing the videos.

The director denied the petition, stating that the self-petitioner "failed to establish that the occupation is composed of traditional religious functions that requires training beyond that of a dedicated and caring member of the church."

On appeal, counsel cites to an unpublished decision in which the AAO determined that a religious producer and director qualified as a religious occupation as evidence that the instant petition should be approved. Counsel's argument was previously rejected by the director who stated that the decision referred to by counsel "was for a temporary nonimmigrant worker and that approval does not have precedent over this case." We agree with the director's determination and note that while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Further, counsel has furnished no evidence to establish that the facts of the instant petition

are analogous to those in the unpublished decision or that the AAO determined that *a* religious producer qualifies as a religious occupation rather than that the particular position in question qualified as a religious occupation. The decision is clearly not a blanket ruling that *every* religious producer works in a qualifying religious occupation. Traditional religious functions vary from denomination to denomination. The employer and alien in the unpublished decision belonged to the Catholic Church, whereas the matter now at hand concerns a Jewish organization and self-petitioner.

Counsel also argues that the director applied an extra requirement that is not contained in the statute or regulation. Specifically, counsel asserts that neither the statute nor the regulation “require specific religious training to qualify as working in a religious occupation.” We find counsel’s argument on this point to be persuasive and find that although the self-petitioner must be qualified in his occupation, the regulation requires no specific religious training or theological education.

Although we withdraw the portion of the director's finding regarding the application of impermissible requirements, we do not find the record contains sufficient evidence that establishes the employing organization's denomination considers the duties of the self-petitioner's position to be a traditional religious function. All of the evidence submitted pertains to the employing organization and provides no information on whether the position of producer, director and editor of religious educational films is recognized by the Jewish Orthodox faith.

Therefore, while we find that the self-petitioner’s work may involve religious purposes, the available materials do not persuasively demonstrate that the self-petitioner's position is directly related to the religious creed of the Jewish Orthodox faith, that the position is defined and recognized by the governing body of that faith, and that the position is traditionally a permanent, full-time, salaried occupation within that faith.

The burden of proof in these proceedings rests solely with the self-petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.