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U.S. Citizenship
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FILE: [REDACTED]
WAC 03 239 54123

Office: CALIFORNIA SERVICE CENTER

Date: FEB 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:

[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.

Mari Johnson

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 dismissed.

The petitioner is school that is a religious affiliate of the General Conference of Seventh Day Adventists. 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 primary school teacher. The director determined that the petitioner had not established that the beneficiary's position qualifies as 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 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 under discussion 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 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.

The petitioner has offered the beneficiary a position as a primary school teacher and Superintendent of Schools, describes the duties associated with the position, in a July 30, 2003 letter:

[The beneficiary] will instruct students in the Bible and religious studies, as well as Japanese language and academic subjects. His responsibilities range from preparation of course objectives and outline for course of study. The teacher assigns lessons and corrects homework, administers tests to evaluate pupil progress, records results, and issues reports to inform parents of progress. He will also meet with parents to discuss student progress and problems. He will participate in faculty and professional meetings, educational conferences, and teacher training workshops. [The beneficiary] will need to stay up-to-date on educational materials and teaching techniques used in the Japanese and American educational systems, and, most important, participate in CCCSDA religious activities.

This is a full time job. He will spend at least 38 hours every week instructing students, preparing lesson plans, grading papers, giving guidance and counseling to the students, meeting their parents, attending faculty meetings, and managing classes. He will serve as Bible class superintendent, as well as teacher.

As the regulatory definition at 8 C.F.R. § 204.5(m)(2) clearly states that some occupations do not qualify as religious occupations, notwithstanding the religious character of the employer, the fact that the beneficiary teaches at a religious institution does not make the beneficiary's duties a religious occupation. If there is no meaningful or significant distinction between the beneficiary's work at a secular institution and the petitioning religious school, then there is no reasonable basis to determine that the beneficiary's work is a traditional religious function rather than a pervasively secular activity.

The director requested evidence to show that the duties required of the beneficiary's position amount to a religious occupation or traditional religious function. In response, [redacted] in his capacity as Vice President for Education for the petitioning school, essentially reiterated the above description in a September 17, 2003 letter:

As a Primary School Teacher at the church's San-Iku Gakuin Japanese School, [the beneficiary] will instruct students in the Bible and religious studies, as well as Japanese language and academic subjects. In this position, [the beneficiary's] responsibilities will include:

1. Preparation of course objectives and outline for course of study that focus on the Bible and teachings of our faith. In this capacity, [the beneficiary] will need to stay up-to-date on educational materials and teaching techniques used in the Japanese

and American educational systems, and, most importantly, participate in CCCSDA religious activities.

2. Preparation of lesson plans, assignment and correction of homework using material consistent with the teachings of the Church and its ministries. [The beneficiary] will administer tests to evaluate students' progress, record results, and issue reports to inform parents of progress.
3. Meet with parents to discuss student progress and problems, and provide guidance and counseling focusing on the Bible and teachings of our faith.
4. Participate in faculty and professional meetings, educational conferences, and teacher training workshops.

The overwhelming portion of the beneficiary's duties involve secular activities like preparing lesson plans, assigning and correcting home work, preparing course objectives and outlines, meeting with parents, and attending professional meetings and educational conferences and, thus, appear to be largely indistinguishable from the principal duties of teachers at non-religious institutions.

In denying the petition, the director concluded, "the petitioner has not established that the duties of the beneficiary's prospective occupation relate to a traditional religious function."

On appeal, counsel for the petitioner argues:

The petitioner's letter in support of the petition described in detail [the beneficiary's] current and prospective job responsibilities, and these responsibilities are consistent with those of a religious instructor. [The director] focused on the job title of school teacher and ignored the duties of the job.

The [p]etitioner's September 17, 2003, letter makes it clear that his instruction focuses on the Bible and the teachings of their faith. [CIS] should understand that all of the students complete their normal academic studies at other schools. These students attend [the beneficiary's] classes only in afternoons and on weekends after the academic studies at these other schools are completed. [The beneficiary] is a religious instructor at a religious school and not an academic teacher at an academic school. This is an important point not considered by the [director].

We are not persuaded by counsel's argument. First, the record does not contain any evidence to support counsel's assertion that the beneficiary's students complete their "normal academic studies at other schools." The petitioner has provided no evidence that the beneficiary work is performed in the afternoon and on the weekends after the students complete studies at other schools. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In fact, in the original letter submitted by the petitioner, the petitioner indicates that in addition to teaching the Bible and religious studies, the beneficiary teaches Japanese language and academic subjects. Such

statements appear to contradict the claims made by counsel on appeal. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, the record does not support counsel's assertion that the director "focused on the job title of school teacher and ignored the duties of the job," or that the director did not consider the beneficiary as a "religious instructor at a religious school rather than an academic teacher at an academic school." In his decision, the director listed the duties as described by the petitioner and determined that the beneficiary's "position and duties are secular in nature." The director also states that "the mere fact that the persons are members of a religious denomination working in a facility [run] by that religious denomination does not establish that the job relates to a traditional religious function." Contrary to counsel's assertions, the director's statements clearly demonstrate that the director considered the beneficiary's job duties as well as the fact that the beneficiary was employed as a religious school. The fact that counsel does not agree with the director's findings does not mean that the director did not consider such facts.

Counsel cites to two unpublished AAO decisions; one where the AAO found a math teacher who "sometimes engaged in liturgy preparation and doing church related work such as conducting choir practice" not to be a religious occupation, and the other where the AAO determined an alien was engaged in a religious occupation where the record showed the beneficiary was 'teaching the Bible and counseling young members of the congregation.'" Counsel then states:

From these decisions, we can see that the focus is on the primary activity of the beneficiary. In the case granted, it was key that the record showed the beneficiary's time was spent teaching the Bible and counseling the faithful. In the case denied, such activities were only done "sometimes," while the majority of the time was spent as a math teacher.

Our case clearly involves a religious professional, since the record shows that the beneficiary's time is spent on religious instruction. The fact that the children study academic subjects at other schools before attending the Church school in the afternoons and weekends makes this point even more clear.

We are not persuaded by counsel's argument. First, we note that 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act; however, unpublished decisions are not similarly binding. Second, we do not find that the majority of the beneficiary's time is spent on religious instruction. As noted previously, the petitioner's description of the beneficiary's duties reveals that the beneficiary's duties mainly involve secular duties. The fact that the beneficiary may intersperse some religious material into his teachings does not make him a religious instructor.

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 sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.