

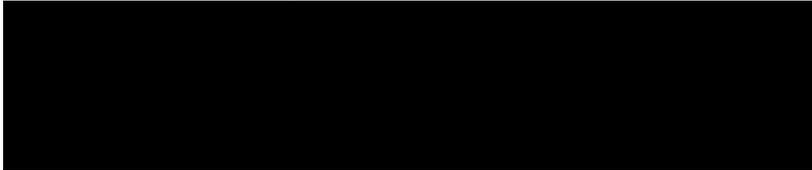
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U.S. Citizenship
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Services

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FILE:



Office: TEXAS SERVICE CENTER

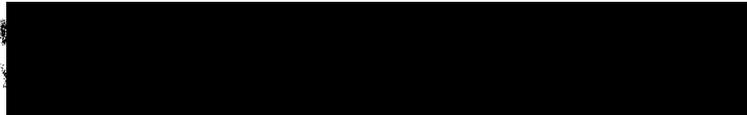
Date:

FEB 28 2005

SRC 02 101 52844

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:

SELF-REPRESENTED

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Seventh-day Adventist "educational center" that focuses on "preventive medicine." 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 assistant dietician. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also determined that the petitioner had not established that the position is that of a religious worker.

On appeal, the petitioner submits a letter and additional documentation.

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 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 Internal Revenue Service (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) of 1986 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 which contains a proper dissolution clause and which specifies the purposes of the organization.

According to a letter dated May 5, 2003 from Wilbur P. Atwood, president and pastor of Wildwood Sanitarium, Inc., the petitioning organization is a project of Wildwood Sanitarium, Inc. and operates under a dba (doing business as) name. Reverend Atwood states that Wildwood Sanitarium, Inc. is primarily classified as a religious school for IRS purposes, but under its charter, it is "authorized to foster many projects." The petitioner submitted a copy of a Georgia Department of Human Resources Hospital Permit, which authorizes the Wildwood Sanitarium, Inc. to operate a 13-bed hospital under the name of Wildwood Lifestyle Center and Hospital. The petitioner also submitted a copy of a Georgia Sales and Use Tax Certificate of Exemption, which requests exemption for the Wildwood Sanitarium, Inc. doing business as Wildwood Lifestyle Center and Hospital.

The petitioner submitted a copy of a May 1, 2003 letter from the IRS, in which it indicated that Wildwood Sanitarium, Incorporated had been granted tax exempt status under section 501(c)(3) of the IRC as an organization described in sections 170(b)(1)(A)(ii) and 509(a)(1). This establishes that the petitioner was granted tax-exempt status as an educational organization. The petitioner also submitted a copy of its 1942 articles of incorporation, which specify the purpose of the organization but do not contain the dissolution clause required by the IRS for the purpose of granting tax-exemption under section 501(c)(3). The petitioner did not submit a copy of a completed IRS Form 1023.

On appeal, the petitioner states that the Seventh-day Adventist Church "is hierarchical in structure and has one tax identity number which embraces all its local Churches and church entities in the United States." (Emphasis omitted.) However, in his letter of May 5, 2003, Reverend Atwood stated that one of the connections that the petitioner has to the Seventh-day Adventist denomination is through its membership in the Adventist Services and Industries. The record contains a statement from Ron Christman, Secretary-Treasurer of the Adventist-Laymen's Services and Industries, in which he states, "The self-supporting institution is not owned by the denomination, but has its own federally tax exempt non profit corporation. These institutions are directly tied to and recognized by the denomination through membership in Adventist-laymen's Services and Industries."

The petitioner is therefore not covered under a group tax-exemption granted to the Seventh-day Adventist Church. The petitioner failed to submit a copy of an IRS certification, granting it tax-exempt status as a religious organization. The petitioner also failed to submit alternative evidence pursuant 8 C.F.R. § 204.5(m)(3)(i)(B).

The petitioner's evidence is insufficient to establish that it is a bona fide nonprofit religious organization, exempt from taxation as required by the statute and regulation.

According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

In its letter accompanying the petition, the petitioner stated that the beneficiary had served as a medical missionary worker since December 16, 1999. It indicated that her duties consisted of:

- In whatever position she ministers, she watches for those who are in need of counsel, advice [sic] and instruction in health, particularly in nutrition, and in religious matters.
- To teach and encourage both patients and lifestyle guests to improve their failings, and how to achieve a fuller life through better health principles and lifestyle.
- Assisting the sick and elderly patients in their needs.
- To find those who will allow her to study Bible truths with them.
- Teaches in the children's Sabbath School classes in the local church.

In a request for evidence (RFE) dated March 17, 2003, the director requested clarification of the beneficiary's prior work experience and duties and a detailed job description for the proffered position. In response, the petitioner stated that the beneficiary "has worked in the area of nutrition and spiritual counseling. She works closely with the dietician to see that hospital and lifestyle patients get the correct custom made meals." The petitioner further stated that the duties of the proffered job were the same as those the beneficiary had been performing.

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 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. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

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 his letter of May 5, 2003, Reverend Atwood states that the petitioner "expect[s] each volunteer to not only witness to each person who comes for our services about the Bible but also about health subjects on a one-to-one basis and/or by giving health lectures." However, it appears that the beneficiary is involved primarily in meal preparation, and the petitioner submitted no evidence that she makes contact with any of the people who utilize the petitioner's organization.

On appeal, the petitioner asserts that religion is pervasive throughout everything that the Seventh-day Adventist does, and that all occupations and vocations within the denomination relate to a religious function, including "janitorial services, maintenance workers, cooks, [and] clerks." Nonetheless, the regulation specifically excludes from the definition of religious occupation, those whose duties are primarily administrative or secular in nature.

While the petitioner may limit its selection of employees to those of its denomination, this fact alone does not establish that the position is a religious occupation.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The evidence does not establish that the position is a religious occupation within the meaning of the regulation.

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.