

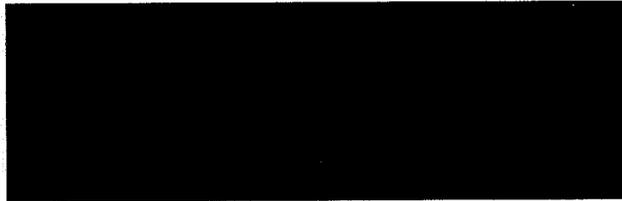


U.S. Citizenship  
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FILE: [REDACTED]  
EAC 02 184 52524

Office: VERMONT SERVICE CENTER

Date: MAY 10 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary [REDACTED]

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.

*Maui Johnson*

*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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. 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 literature evangelist. The director determined that the petitioner had not established that the position qualified as that of a religious worker.

On appeal, the petitioner submits a brief 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 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 alien must be coming to the United States at the request of the religious organization to work as a religious worker. 8 C.F.R. § 204.5(m)(1).

The petitioner states that the principal duties of the position are:

- 1) Making friends for Christ and sharing the beliefs of the [REDACTED]
- 2) Conducting Bible studies and distributing Christian literature to the community.
- 3) Reporting on progress and solicit[ing] support and involvement from members of nearby churches.

- 4) Providing spiritual and other kinds of assistance to those of our member churches who are unable to attend church services on the Sabbath and fostering family unity within and without our [redacted] [sic] large.
- 5) Preaching and conducting in-home prayer sessions, and providing SDA literature to those in our congregations who desire additional religious support outside the local church.
- 6) Visiting the sick and comforting the bereaved.

According to the weekly schedule submitted by the petitioner, the job duties and responsibilities are divided as follows:

1. Preaching and Teaching the Word of God; approximately 12 hours a week.
2. Home, hospital and prison visitation and singing among the Filipino-speaking people with [the] purpose of preaching the Bible – approximately 8 hours a week.
3. Organizing prayer groups – approximately 2 hours a week.
4. Distributing Christian literature – approximately 15 hours a week

In an undated document, [redacted] stated that the “colporteur (literature evangelist) is a “self supporting missionary with one main object in mind – to finish the work God called Him to do.” The record also contains a webpage printed from the [redacted] which references “full- and part-time literature evangelists.”

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.

The petitioner submitted an undated letter from the publishing department of the Greater New York Conference of Seventh-day Adventists, which states:

The Literature Evangelist’s work is a full-time outreach of the Church and is designed to spread the gospel and also to promote good reading material for the home. While the greatest

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<sup>1</sup> No further identifying information is provided for [redacted]. The document is typewritten on the petitioner’s letterhead.

emphasis is on Bible-related books, . . . it also includes books on health, such as medical books and other books to promote healthful living. Other topics treated in our publication[s] are: A five-day stop smoking plan, a monthly magazine for teenagers to help prevent them from using drugs and other harmful substances, as well as books on marriage and child raising . . . Literature Evangelists visit mainly non-Seventh day Adventist homes . . . They are evangelists who preach through literature. The Church believes that introducing people to our Christian Literature is missionary work of the highest order.

The record reflects that the primary responsibility of the literature evangelist is to sell publications to non-Seventh-day Adventists. While some of these publications are religious in nature, the literature evangelist is also responsible for selling publications on other topics, such as smoking cessation, juvenile delinquency, marriage and child rearing, to "mainly in non-Seventh-Day Adventist homes." Accordingly, the evidence reflects that a literature evangelist is primarily engaged in the sale of goods.

It is noted that selling literature relating to smoking cessation, juvenile delinquency, marriage and child rearing issues is not an inherently religious activity. The Board of Immigration Appeals (BIA) has previously held that an alien engaged in the sale of toys, jewelry, and trinkets as a means of fund-raising for the Unification Church, even for as little as one-third of his time, was engaged in impermissible secular employment which placed the Church in competition with other sellers of such goods. *Matter of Hall*, 18 I&N Dec. 203, 207 (BIA 1982). The BIA found that such a position may be filled by obtaining an approved application for alien employment certification, Form ETA-750, from the Department of Labor, and then filing an employment-based immigrant visa petition on Form I-140.

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. *Id. See also Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

It is fundamental to this immigrant visa classification that the beneficiary must be coming to the United States to work in a *religious* vocation or occupation. *See* § 101(a)(27)(C)(ii)(II) of the Act. Upon review, the petitioner has not met its burden of proof by establishing that the beneficiary's activities as a "literature evangelist" are religious in nature. Although the petitioner asserts that the sale of health and family issues literature is inherent to its religion, the petitioner has not submitted sufficient evidence to distinguish this activity from the similar entrepreneurial activities of a commercial enterprise.

Additionally, although the petitioner stated that the majority of the beneficiary's time is involved in preaching and teaching the word of God, visitations and organizing prayer groups, the record does not reflect that the petitioner pays the beneficiary for this work. Although the petitioner asserts that it assists the beneficiary by providing him with housing, it submitted no evidence to substantiate its statement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has not established that the proffered position is a religious occupation within the meaning of these proceedings.

Beyond the decision of the director, the petitioner has not established that it has extended a qualifying job offer to the beneficiary. This deficiency constitutes an additional ground for denial of the petition.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner stated that, while it assists in providing the beneficiary with housing accommodation, his "compensation comes from commissions from his sales of church materials. The average yearly income of this type of work is more or less \$21,600." The petitioner further states that the beneficiary has, so far, "managed to come up with what is expected of him – meeting the 1,680 hours requirement per year and not less than 35 to 40 hours per week."

On appeal, the petitioner states, "May we make it clear that a literature evangelist is not a salaried worker. As determined by the [redacted] policy, a Literature Evangelist is self-employed banking his earnings on the sale of church publications."

The statute requires that an alien must be seeking entry into the United States to work for a bona fide religious organization. That requirement is not met when the individual is self-employed as the self-employed individual works for him/herself. Therefore, self-employment is not qualifying employment for purpose of this visa preference classification. The record does not establish that the petitioner has extended a qualifying job offer to the beneficiary. For this additional reason, the petition may not be approved.

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.