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U.S. Citizenship
and Immigration
Services



CI

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 21 2005
WAC 03 235 53904

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:



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 employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted, the previous decision of the AAO will be withdrawn and the petition will be approved.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3).

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 religious instructor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the position qualifies as that of a religious worker, that the petitioner had extended a qualifying job offer to the beneficiary, or that it had the ability to pay the beneficiary the proffered wage.

In its decision of March 4, 2005, the AAO determined that the petitioner had overcome all of the grounds on which the director based his denial of the petition with the single exception that the petitioner had still failed to establish that the proffered position qualifies as that of a religious worker.

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).

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 its August 5, 2003 letter accompanying the petition, the petitioner stated that the proffered position was that of a religious instructor with a monthly salary of \$1,500 per month. The duties of the position were described as including "planning, organizing and directing the religious educational, social, and recreational programs for

female church congregation members to promote religious education. In addition, she will counsel members concerning personal problems, visit church members at home, in the hospital or convalescent facilities to offer spiritual guidance and assistance.”

In a request for evidence (RFE) dated August 31, 2003, the director instructed the petitioner to:

[P]rovide a detailed description of the work to be done, including . . . specific job duties, level of responsibility, number of hours per week performing the work duties and the minimum education, training, and experience necessary to do the job. Further, explain how the duties of the position relate to a traditional religious function.

In its response, the petitioner stated:

The duties of the position relate to a traditional religious function in that the Religious Instructor is in charge of ensuring quality religious education and the spiritual growth of our members. More specifically, we view the Religious Instructor as a quasi-minister in that she is chosen by the pastor and confirmed by the congregation's vote. We view this position not as a mundane job, but rather as a spiritual calling. The Religious Instructor is responsible for educating the current and future members of our church and for instilling the proper spiritual values and worldview.

The Religious Instructor complements and enhances the religious education of our members by providing more in-depth spiritual guidance, systematically exposing the Word through teaching in a classroom setting. In addition, the Religious Instructor sometimes is better equipped to deal with our female congregants' personal spiritual issues.

On appeal, the AAO stated:

[T]he record continues to lack evidence that the petitioner's denomination regards the duties of a religious instructor as a traditional religious function, with such instructors being routinely employed full-time at the denomination's churches. First, there is no evidence to show that any person has ever been employed in this position prior to the beneficiary's hiring. That the petitioner was able to operate as a church prior to the beneficiary's employment is evidence that the beneficiary's position is not traditionally a permanent, full-time salaried occupation within the petitioner's denomination. Further, though it is clear that the beneficiary has been employed for two years with the petitioner, there is no evidence that the petitioning church, the governing body of the petitioner's denomination defines and recognizes the position of a religious instructor.

On motion, counsel states:

[I]n its cover letter in support of the I-360 petition, the Petitioner did indicate that it required the services of a Religious Instructor due to the rapid increase in its membership.

Thus, the fact that there was no paid Religious Instructor position prior to the hiring of the Beneficiary was due to the small size of the congregation, and is not a reflection on the religious nature of the position.

Further, the CSC's RFE dated August 31, 2003 did not solicit a letter or other evidence from the governing body of the Petitioner's religious denomination to document the religious nature of the position. It simply requested an explanation "from an authorized official of the religious organization," i.e., the petitioning church, regarding "how the duties of the position relate to a religious function." See RFE. The Petitioner complied with this request in its response.

Moreover, in its decision, the CSC did not point out the lack of evidence from the governing body. As the Petitioner was not put on notice as to the preference for this type of evidence, it did not attempt to supplement the record on appeal.

On motion, the petitioner submits a March 22, 2005 letter from [REDACTED] the director of missions for the Orange County Southern Baptist Association. According to [REDACTED]

In a Southern Baptist Church there is a senior pastor and often several associate pastors who assist in fulfilling the mission of the church. One of those positions is "Minister of Education, Director of Education, Religious Education Director, Religious Instructor, etc." to promote religious education and spiritual growth by members and new converts. We believe God calls pastors as well as associates to fulfill the Biblical purpose of the church. This is a position for which students in Bible Colleges and Seminaries are trained to serve on the staff of a church. Through the ministry of this person a church has the potential of numerical and spiritual growth. Normally the pastor will recommend a person to the church and the church will vote to elect/employ.

The regulation specifically includes religious instructor as a qualifying religious occupation. The petitioner submitted evidence sufficient to establish that the duties of the proffered position are consistent with that of a religious instructor. The director of missions for the Orange County Southern Baptist Association, of which the petitioning organization is a member, states that positions within the Southern Baptist Church that are sometimes identified as religious instructors are integral in the denomination.¹

We find that the record is sufficient to establish that the position is a religious occupation within the meaning of the statute and regulation. The record also establishes that the beneficiary is otherwise qualified for the visa preference classification.

¹ A review of the website for the Southern Baptist Convention on September 22, 2005, revealed a posting for a full-time associate pastor of education and evangelism and a part-time position in evangelism, with duties of assisting the pastor in education and "growing a church." See www.sbc.net/jobs.

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. The previous decisions of the director and the AAO will be withdrawn. The petition will be approved.

ORDER: The AAO's decision of March 4, 2005 is withdrawn. The petition is approved.