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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 26 2006
EAC 04 152 50287

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center,¹ 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 a Ukrainian Orthodox 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 in an unspecified capacity. The director determined that the petitioner had not established: (1) that the beneficiary had the requisite two years of continuous work experience in the occupation and membership in the religious denomination, immediately preceding the filing date of the petition; (2) that the position offered to the beneficiary qualifies as a religious occupation; (3) that the beneficiary possesses the necessary qualifications; or (4) the petitioner's ability to compensate the beneficiary.

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)(1) states, in part:

¹ We note that 8 C.F.R. § 103.2(a)(6), as in effect at the time of filing, states that, except where otherwise specified, a petition should be filed with the Service Center with jurisdiction over the place of residence of the petitioner. 8 C.F.R. § 204.5(b) requires that Form I-360 must be filed with the Service Center having jurisdiction over the intended place of employment unless otherwise specified. The petitioner is located in Chicago, Illinois, which is within the jurisdiction of the Nebraska Service Center. Neither the petitioner nor counsel has explained why this petition was filed with the Vermont Service Center. Therefore, it is not entirely certain that this petition was properly filed, but the dismissal of the appeal makes that issue moot.

An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation, or working in a religious vocation or occupation for the organization or 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. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on April 23, 2004. Therefore, the petitioner must establish that the beneficiary was a member of the Ukrainian Orthodox denomination, continuously performing the duties of a teacher and principal, throughout the two years immediately prior to that date.

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.

8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to demonstrate that the beneficiary is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that type of work to be done relates to a traditional religious function.

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 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.

8 C.F.R. § 204.5(m)(4) requires the petitioner to set forth various elements of the job offer, including terms of payment. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Apart from the Form I-360 petition itself, the petitioner's initial submission consists of seven pages of documents. A letter from the Illinois Department of Revenue certifies the petitioner's exemption from certain state and local taxes. Five pages of copies of various documents establish that the beneficiary and her daughter are in the United States as H-4 nonimmigrants. We note that H-4 nonimmigrants are not authorized to work in the United States. Finally, the petitioner submits a letter from [REDACTED] Ruling Hierarch of the denomination's Western Diocese. [REDACTED] states:

[The beneficiary] has served in our Church . . . as a religious worker from August 1, 2001 to the present.

During her service with the Church, [the beneficiary] has provided the following services:

- Taught Holy Bible classes that include both the Old and New Testaments to schoolchildren in various grades;
- Conducted classes about prayers and their meaning;
- Taught the meaning and observance of Orthodox Christian rights [*sic*];
- Taught classes in Ukrainian language, history and culture;
- As principal of a 10-grade parochial school, she has developed the school's curriculum and is teaching methodology for classes in religion, culture and language.

On April 18, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit, among other things, detailed evidence of the beneficiary's employment experience; evidence that the beneficiary possesses the necessary qualifications for her position; and evidence of the petitioner's ability to pay the beneficiary's proffered wage.

The response to the RFE, as it now stands in the record of proceeding, relates only to the petitioner's standing as a tax-exempt religious organization. There is nothing in the RFE response in the record to address any of the other grounds mentioned in the RFE.

The director denied the petition on September 15, 2005, stating that the petitioner had failed to provide information that is required to meet numerous criteria for eligibility. On appeal, counsel states: "The Service denied the application for lack of specific information regarding date of service and duties to be provided. Nevertheless, prior documents from the Church provided said information. In addition we attach herewith a letter that provides the requested information."

Counsel incorrectly implies that the denial rested entirely on the “lack of specific information regarding date of service and duties to be provided.” As we have already shown, the director also found that the petitioner had failed to document its ability to pay the beneficiary, or even to specify the terms of such payment; to establish that the beneficiary’s intended duties relate to a traditional religious function; or to establish that the beneficiary is qualified to perform those functions. Counsel also errs in claiming that the petitioner had provided “specific information regarding . . . duties to be provided.” In his letter, [REDACTED] described the services that the beneficiary “has provided” in the past. He did not specify how many, if any, of these services the beneficiary was to continue to provide in the future, or the extent to which the beneficiary’s intended future duties may differ from her claimed past work.

The only new exhibit submitted on appeal is a letter from Parish Council President [REDACTED] who states:

[The beneficiary] served as a religious worker with our Church from August 1, 2001 to the present time. During that time [the beneficiary] provided services to include teaching of children regarding religious scriptures, traditional Ukrainian ceremonies and holiday preparations. [The beneficiary] spent more than 35 hours per week providing said services.

The job description within our Church remains the same: **Religious Worker**.

(Emphasis in original.) The phrase “Religious Worker” is more of a broad category than a “job description” *per se*. Even so, given the assertion that the beneficiary’s “job description . . . remains the same,” the petitioner evidently asserts that the petitioner will continue to serve as a teacher as she is said to have done in the past. The regulatory definition of “religious occupation” includes religious instructors, and what little description the petitioner has offered of the position appears to conform to that definition. We therefore withdraw the director’s finding that the petitioner has not shown the proffered position to be a religious occupation. That finding, however, was only one of numerous grounds for denial, any one of which would suffice by itself to warrant denial of the petition.

We concur with the director that the petitioner has provided no documentary evidence to establish the beneficiary’s experience or denominational membership during the two-year qualifying period. The petitioner has not established the minimum qualifications for the offered position, or shown that the beneficiary possesses those qualifications. Finally, the petitioner has not even specified the amount of the beneficiary’s remuneration, let alone provided acceptable evidence of its ability to provide that remuneration. The petitioner, in its response to the RFE and its subsequent submission on appeal, appears to have made no effort to address these concerns.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.