

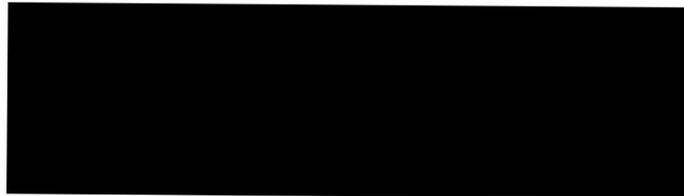
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

Ci

PUBLIC COPY



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 2006**
WAC 02 280 51845

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The AAO shall withdraw its previous decision, reopen the proceeding, and approve the petition.

The petitioner is a Baptist 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 lead teacher at the petitioner's Blessed Beginnings Preschool. The director determined that the petitioner had not established that the position offered to the beneficiary constitutes a religious occupation. The AAO's subsequent dismissal was based on technical grounds rather than the merits of the petition.

Because newly available evidence shows that the summary dismissal was in error, we hereby reopen the proceeding, pursuant to 8 C.F.R. § 103.5(a)(5)(i), and shall consider the petitioner's appeal on its merits.

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 sole issue raised in the director's decision is 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.

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.

[REDACTED], senior pastor of the petitioning church, describes the beneficiary’s duties:

We wish to sponsor [the beneficiary] to perform all religious education functions at the Blessed Beginning Preschool. As Lead Teacher, her responsibilities include planning, supervising and implementing the religious education program of our Church for the preschool children. The Lead Teacher develops and implements the Bible learning curriculum, leads the children in prayer, demonstrates, models and explains our Christian faith and heritage to students and parents. Finally, the Lead Teacher must provide leadership and stability for the program’s continuity.

On April 29, 2003, the director issued a request for evidence (RFE). The RFE touched on twelve different subjects but the director did not, at that time, request evidence that the beneficiary’s occupation related to a traditional religious function. Because RFE did not discuss the issue of the beneficiary’s occupation, the petitioner’s response to the RFE did not address the issue.

On August 31, 2003, the director denied the petition, based solely on the finding that “[t]he beneficiary’s duties do not relate to a traditional religious function. . . . [T]he duties of the occupation do not have religious significance [or] embody the tenets of that particular religious denomination.” The director noted that the beneficiary holds a degree in broadcast communications, which does not relate to her work for the church.

The petitioner filed an appeal on September 30, 2003, stating only that a brief would be forthcoming within 30 days. When the AAO reviewed the appeal, the record of proceeding contained no further submission from the petitioner. Consequently, on July 9, 2004, the AAO summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v).

Counsel has since demonstrated that a timely supplement was submitted on October 28, 2003, which for some reason failed to reach the record of proceeding. The supplement included a brief in which counsel observes that the regulatory definition of “religious occupation” includes “religious instructors,” and that the regulations do not support a requirement that a religious occupation must require specific, formalized religious training. Documents from the church show a significant emphasis on teaching. In a new letter, [REDACTED] minister of worship arts at the petitioning church, states:

Blessed Beginnings is a vital part of our church, providing evangelism, discipleship, and Christian teaching for our children and the children of our community.

[The beneficiary] teaches the children the stories of our faith, biblical commands, Christian beliefs and doctrine. She prays [*sic*] with her students and ministers to the needs of their families. She is clearly a minister fulfilling religious work everyday that she is on the job. . . .

[The beneficiary's] role as a religious instructor is a crucial one.

Counsel is correct that "religious instructors" fall within the regulatory definition of a religious occupation. We also acknowledge, nevertheless, that not every person who engages in some degree of religious instruction qualifies for classification as a special immigrant religious worker. One must consider the scope and extent of the individual's duties, as well as the terms under which this work is performed. For instance, an individual with a full-time secular job who volunteers for a few hours a week to teach Sunday school and meet with weekly youth groups is arguably engaged in "religious instruction," but not to an extent that would warrant permanent immigration benefits based on that work. Here, the petitioner has established that the beneficiary is a compensated, full-time worker whose duties involve religious instruction rather than wholly secular child care functions.

Upon consideration, we conclude that the petitioner has successfully overcome the one issue raised by the director as a basis for denial of the petition.

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. Accordingly, the petition will be approved.

ORDER: The July 9, 2004 decision by the Administrative Appeals Office is withdrawn. The petition is approved.