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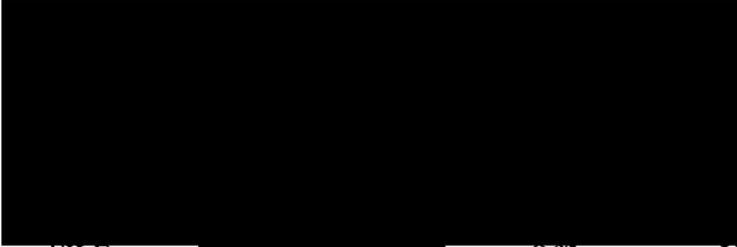
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] EAC 02 125 54752

Office: VERMONT SERVICE CENTER

Date: OCT 05 2006

IN RE: Petitioner:
Beneficiary:



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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a residential school for mentally disabled individuals. 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 co-worker/houseparent. The director determined that the position offered to the beneficiary does not constitute a qualifying religious occupation.

In denying the petition, the director stated that the beneficiary “does not appear [to be] an individual who occupies a traditional religious function above those performed routinely by lay members of the congregation. It is also noted that the position . . . is voluntary.”

On appeal, counsel asserts that the position entails “full-time responsibility, 24 hours a day, 7 days a week. The duties of the position preclude the beneficiary from holding any other job.” Counsel also argues that, while the petitioner must remunerate the beneficiary, such remuneration need not be in the form of cash.

The Board of Immigration Appeals ruled that an alien who “receives compensation in return for his efforts on behalf of the Church” is “employed” for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). Therefore, the beneficiary’s nominal status as a “volunteer” is not inherently disqualifying; the record demonstrates that the petitioner supports its “volunteers.”

Upon consideration, we concur that the position offered to the beneficiary is not simply a part-time, unremunerated position; it requires considerably more dedication and effort in a setting that is not conducive to outside employment. Because the director’s stated grounds for denial do not withstand scrutiny, the director’s decision cannot stand.

That being said, however, there remains a significant issue that the petitioner must resolve. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the intending employer qualifies as a non-profit organization in the form of either:

- (A) Documentation showing that it is exempt from taxation in accordance with section 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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner's determination letter from the Internal Revenue Service (IRS), dated March 12, 1963, does not specify the nature of the petitioner's classification; it predates the system of classifications used in section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code).

The burden of proof is on the petitioner to establish that its exemption derives in large part from its religious character, rather than from its educational purposes alone.

The organization can establish this by submitting documentation which establishes the religious nature and purpose of the organization, including brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. That being said, it is important to note that item (2), Schedule A of Form 1023, is only required "if applicable." If Schedule A is not applicable in a given instance, then the petitioner's failure to submit Schedule A is not grounds for denial of that petition.

If the petitioner is still in possession of the Form 1023 by which it first gained recognition as a tax-exempt entity, the petitioner should provide a copy of that Form 1023 rather than a newly executed version in order to establish its eligibility at the time of filing. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Also, obviously, it is not enough merely for the petitioner to submit the documents listed above. The content of those documents must establish the religious purpose of the organization.

We note the following description of the petitioning organization, provided by Associate Director Penelope Roberts: "The International Camphill Movement is a non-sectarian, non-profit religious organization . . . based on anthroposophy. Anthroposophy is Christian philosophy based on the teachings of the Austrian philosopher and humanitarian, Rudolph Steiner." The petitioner cites *Lindenberg and Camphill Village, Inc. v. U.S. Dept. of Justice*, 657 F.Supp. 154 (D.D.C. 1987), in which the court held that the Camphill Movement is a religious organization. The judge in that decision asserted that the Camphill Movement is "[b]ased on 'anthroposophy'" and "focused toward 'Christianizing' the ordinary aspects of life for the mentally handicapped." *Id.* at 155.

In an effort to determine whether the petitioner's own literature describes the religious purpose and nature of the activities of the organization, the AAO visited the petitioner's web site, [REDACTED]. That site indicates that Christian holidays are celebrated, but immediately following this passage is the assurance that "Camphill places welcome people of any religious, ethnic or racial background." No indication is given to potential clients that the students are to be "Christianized."

The petitioner's site contains links to www.awsna.org, which is the Association of Waldorf Schools in North America, and <http://www.anthroposophy.org>, which is the web site of the Anthroposophical Society in America. The latter site contains a September 15, 2005 press release,¹ which declares that the plaintiff in a California lawsuit "failed to prove that anthroposophy is a religion for establishment clause purposes." In conjunction with that lawsuit, *PLANS, Inc. v. Sacramento City Unified School District et al.*, CIV. S-98-0266 FCD PAN, the Anthroposophical Society filed an *amicus curiae* brief² containing the following arguments:

The Society believes that a decision by this Court that adopts the plaintiff's position . . . that anthroposophy is a religion, would profoundly mischaracterize anthroposophy and cast the relationship of anthroposophy with Waldorf education, independent Waldorf teacher training academies, and several hundred independent entities which characterize themselves as Anthroposophical in a false light. . . .

Central to the plaintiff's argument is the allegation that "anthroposophy" rises to the legal definition of a "religion" for Establishment Clause purposes. The Society disputes this characterization and offers the Court this *amicus* brief to substantiate the Defendant School Districts' position that the Court should not answer in the affirmative the question "Is Anthroposophy a religion?". . . .

The Statutes of the Society state emphatically that anthroposophy is not a religion. . . .

Without question, Anthroposophy . . . is manifestly not a "belief-system" of any kind.

If Anthroposophy is not a religion, then it is reasonable to ask the identity of the religious denomination to which the petitioning school is affiliated. If, on the other hand, the petitioner in this proceeding seeks to argue that Anthroposophy *is* a religion, then the petitioner must account for the contrary claim advanced by the Anthroposophical Society in federal court. We note that, in the litigation referenced above, it was in the Society's interest to deny that Anthroposophy is religious in character; in the present proceeding, it is in the petitioner's interest to claim the opposite.

If the Camphill movement, including the petitioning school, is founded on Rudolf Steiner's principles of Anthroposophy, and Anthroposophy, in turn, is not a religion (as the Society has recently argued in federal court), then the petitioner must identify the *religious* denomination with which it is affiliated and provide persuasive documentation of that affiliation. (Documents, such as Form 1023, executed after the date of this present notice

¹ Available at <http://www.anthroposophy.org/PressReleases/Trial20050915.php> (visited September 21, 2006)

² Available at <https://www.anthroposophy.org/Announcements/getfile.php?bn=anboard&key=1091036814> (visited September 21, 2006).

will not be considered persuasive documentation. Any qualifying affiliation presumably existed in 1963, the year the IRS issued its determination letter to the petitioner, and it is reasonable to expect evidence of comparable vintage.) Given the claims of the Anthroposophical Society, any claim that Anthroposophy is a religious philosophy will necessarily be met with extremely skeptical scrutiny.

Thus, a fundamental question – “Is the petitioner a religious organization, an organization affiliated with a religious denomination, or neither?” – remains unanswered. A related issue necessarily surfaces when considering whether or not the petitioner qualifies as a religious entity. The definition of “religious occupation” at 8 C.F.R. § 204.5(m)(2) requires that a given occupation relate to a traditional religious function. Wholly secular functions, such as janitorial or secretarial duties, are excluded from the definition. The qualifications for these secular functions do not involve the specific creed or doctrine of any given faith. Traditional religious functions, however, require members of the particular faith. For such function, a Baptist church would hire a Baptist; a Reformed Jewish synagogue would employ a Reformed Jew; and so on.

This is in keeping with the regulations at 8 C.F.R. § 204.5(m)(3)(ii)(A) and the statute at section 101(a)(27)(C)(i) of the Act, both of which require the beneficiary to be, and to have been for two years, a member of the petitioner’s religious denomination. The denomination in question must, of course, be identified; the petitioner cannot simply identify itself as a denomination and leave it at that. 8 C.F.R. § 204.5(m)(2) defines “religious denomination” as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

The above issue is salient because of the question that arises when considering the position that the petitioner has offered to the beneficiary: What religious beliefs *must* a person hold, in order to qualify for the position of a co-worker and curative educator? It cannot suffice to state that certain beliefs are *preferred* for the position; one would not expect a Roman Catholic Church to resort to appointing a Presbyterian deacon if no qualified Catholic seeks the position. If the duties of a particular position are not restricted to individuals of a particular religious background, then those duties cannot reasonably be deemed “religious functions.”

From the above, it follows that, if one need not belong to a particular religious denomination in order to work as a co-worker and curative educator, then it becomes very difficult to argue that the duties of a co-worker and curative educator nevertheless relate to a traditional religious function. With this in mind, we note that the “Volunteer Opportunities” page of the petitioner’s own web site³ gives no indication that applicants must be a member of a specific religious faith. Rather, employment links on the petitioner’s site lead to <http://www.camphill.org/faq.php> (visited September 26, 2006), which contains the following passage: “Camphill is an expression of a Christian path, but you do not have to be a practicing Christian to live and work in Camphill. Anthroposophy recognizes all spiritual and religious paths.” Leaving aside the enormous diversity of denominations that fall under the term “Christian,” the petitioner’s hiring policy suggests that the petitioner would welcome a Jew or Hindu to work as a co-worker/houseparent, but such an individual could never qualify

³ Available at http://www.camphillvillage.org/static_contents/content_groups/volunteer/vol_set.html (visited September 26, 2006).

for immigration benefits through that work because no Jew or Hindu subscribes to the petitioner's ambiguously "Christian" denomination, whatever that denomination is, and the statute and regulations plainly require that the alien belong to the employer's religious denomination.

The above discussion raises issues that are highly adverse to the approval of the present petition, but the petitioner has not yet had an opportunity to respond to these issues. The director must raise these issues in a new decision.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.