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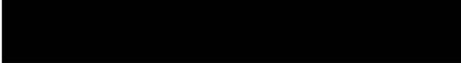
U.S. Citizenship  
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FILE: LIN 03 199 51883 Office: NEBRASKA SERVICE CENTER Date: **OCT 10 2006**

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for further consideration and action. The director denied the petition a second time. The matter is now before the AAO on certification. The AAO will affirm the director's denial of the petition.

The petitioner is a regional office of the Salvation Army, an international religious and charitable organization. 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). At the time of filing, the petitioner employed the beneficiary as a corps helper. In the more recent decision, the director found that the petitioner seeks to employ the beneficiary in a position for which the beneficiary lacks the required qualifications and experience.

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) indicates that the "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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on June 12, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the proffered position throughout the two years immediately prior to that date. Among several requirements listed at 8 C.F.R. § 204.5(m)(3)(ii) is that the alien must possess the

necessary qualifications for the position offered. At issue here is the nature of the position offered to the beneficiary, as shall be explained presently.

In its remand order of April 15, 2005, the AAO found that the petitioner had overcome the grounds for denial cited by the director, but that review of the record revealed another issue that prevented the approval of the petition. The AAO stated:

[T]he petitioner has consistently indicated that the position of "Corps helper" is, by design, only a stepping stone to the position of "Officer," and that the beneficiary desires, and has applied, to become an Officer. The petitioner, on appeal, submits a "Glossary of Salvation Army Terms." This glossary includes, and the petitioner has highlighted, the term "Officer," defined as "A Salvationist who has left secular concerns at God's call and has been trained, commissioned and ordained to service and leadership. An officer is a recognized minister of religion."

The above evidence indicates that an "Officer" is an ordained minister who "has been trained." Given that the beneficiary seeks to become an officer, it follows that the beneficiary seeks to enter the United States to carry on the vocation of a minister. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to establish that the alien possesses the necessary qualifications of a minister. (In this respect, the issue of training becomes not only relevant, but crucial.) Also, with respect to ministers, 8 C.F.R. § 204.5(m)(3)(ii)(A) requires evidence of two years' experience in the vocation of a minister. Here, we have only the petitioner's assertion that the beneficiary intends to begin the training process that would, if completed successfully, culminate in his ordination as an Officer.

Furthermore, the statute and regulations indicate that the beneficiary must intend to enter the United States *solely* for the purpose of working as a minister. It is not readily clear that this provision permits an alien to enter for the sake of working temporarily in some other occupation, with the ultimate goal of ordination. The director's decision did not address this issue, on which fundamental questions of eligibility appear to hinge. The director must afford the petitioner a reasonable opportunity to address this issue before the issuance of a new decision.

On January 23, 2006, the director issued a notice containing the following instructions:

- 1) Provide the beneficiary's current job title within your organization and provide a job description of his/her duties. Please specify the date the beneficiary entered this job title.
- 2) Submit document to verify the intent of this employment-based petition to permanently employ the beneficiary as a Corps Helper or an Officer. Please specify the amount of time the beneficiary has served in each position. Please specify the qualifications for each position and how the beneficiary has met this specifications.

(*Sic.*) In response to this notice, counsel indicates that the petitioner does not currently employ the beneficiary, because the beneficiary's R-1 nonimmigrant status had expired, but that once the beneficiary again receives work authorization, "his position will be one of 'Corps Helper.'" The petitioner submits a

copy of a previously submitted May 9, 2003 letter from Captain [REDACTED] stating: "From August 2000 to August 2002 [the beneficiary] was employed at The Salvation Army . . . Salina, Kansas. . . . His job title was Corps Helper which basically is a ministry assistant position. His responsibilities included development of our Hispanic Ministry program, music training, and worship leadership." In a letter dated September 24, 2003, Business Administrator [REDACTED] states that the beneficiary has been "serving with the Olathe Kansas Corps . . . since November 2002, after transferring from the Salina Kansas Corps." These letters seem to leave a gap of several months between August and November of 2002.

[REDACTED] Divisional Commander of the petitioning division, states that the petitioner "wishes to employ [the beneficiary] in a full-time, permanent position as a Corps helper. . . . Our goal is to send [the beneficiary] to officer training so that he may become a Corps Officer, which is a position equivalent to a pastor or minister." [REDACTED] letter is consistent with the resubmitted job description for the beneficiary's corps helper position, which states: "**The clear and stated intention is to expose this person to the realities of Army Officership, helping them become better equipped in order that they may fulfill their calling to become a Salvation Army Officer**" (emphasis in original). Counsel states that the beneficiary "has been accepted in to the Corps Officer Training Program and will attend if allowed to remain in the U.S. This is a normal progression within the denomination – to gain experience as a Corps Helper, attend Officer training and then, become an officer to lead in a new capacity." This confirms the conclusion that the petitioner intends to employ the beneficiary, ultimately, as a corps officer.

On July 14, 2006, the director denied the petition and certified the decision to the AAO, pursuant to the prior remand order. The director found that the petitioner intends to employ the beneficiary as a corps officer and that, as of the date of filing, the beneficiary lacked the necessary qualifications and experience as a corps officer. The director allowed the petitioner 30 days to respond to the denial. In response, counsel argues that the beneficiary qualifies for special immigrant religious worker status through the petitioner's offer of a "permanent position" as a corps helper. Counsel asserts that the denial cannot rest "upon speculation that a Beneficiary may, some day, obtain ordination and a promotion to Salvation Army Officer. . . . The inference or assumption by the [director] that because, at some point in the future, [the beneficiary] may be able to obtain admittance to the Corps Officer Training Program makes him or this Corps Helper position *unqualified* has no basis in the law" (counsel's emphasis).

In the letters and job descriptions submitted previously, the petitioner has unequivocally stated that its "goal," its "clear and stated intention," is to train the beneficiary as a corps officer. Even counsel previously stated that the transition from corps helper to the "new capacity" of corps officer "is a normal progression." Given these unequivocal assertions, counsel cannot credibly dismiss as "speculation" the assertion that the petitioner seeks to employ the beneficiary as a corps officer.

Even more disingenuous is counsel's rejection of "[t]he inference or assumption . . . that . . . at some point in the future, [the beneficiary] may be able to obtain admittance to the Corps Officer Training Program." This contradicts counsel's earlier claim that the beneficiary "*has been accepted* in to the Corps Officer Training Program" (emphasis added). It is obvious that the petitioner intends to train and employ the beneficiary as a corps officer, to the point of indicating that such preparation is inherent to the position of corps helper (rather than simply representing a hypothetical possibility for advancement).

The “normal progression” from corps helper to corps officer was not yet complete when the petitioner filed the petition. The commander of the petitioning division has clearly stated that the petitioner intends for the beneficiary to “become a Corps officer, which is a position equivalent to a pastor or minister.” At the time of filing, the beneficiary was not yet qualified to serve as a corps officer. As the AAO stated in its previous decision, quoted earlier in this decision, if the petitioner seeks to employ the beneficiary in the capacity of a minister, then the beneficiary must possess the qualifications of a minister as of the filing date. The petitioner cannot circumvent this requirement by applying the adjective “permanent” to a position that is demonstrably a transitional appointment, the “clear and stated intention” of which is to prepare the beneficiary for a “new capacity” as (essentially) a minister.

The evidence of record indicates that the position of corps helper is not a career occupation, but rather a paid training position that serves the express purpose of preparing individuals for service as corps officers. Therefore, we conclude that the petitioner seeks to employ the beneficiary as a minister (*i.e.*, a corps officer), and has filed its petition at a time when the beneficiary has no experience or qualifications in that position. To draw an analogy from another religious denomination, it would be speculative to infer that a Roman Catholic priest may become a bishop at some point in the future; but if a student at a Catholic seminary were to seek admission as a special immigrant religious worker, there would be no speculation involved in concluding that the seminarian intends to become a priest. To borrow counsel’s language, there is a “normal progression” from seminary study to the priesthood; the former is expected, in the usual course of events, to become the latter. A seminarian attends a seminary not for its own sake, but to prepare him for the priesthood; and we have every indication that the same logic applies here. A petition filed in 2003 on the beneficiary’s behalf as a corps officer would fail because, in 2003, he had no experience or qualifications as a corps officer. The petitioner has effectively attempted to surmount this barrier by characterizing his training as a religious occupation in its own right, while pursuing the same ultimate goal, *i.e.*, to employ the beneficiary as a corps officer.

Counsel suggests that the positions of corps helper and corps officer are both facets of a single, unnamed religious vocation. 8 C.F.R. § 204.5(m)(2) defines a religious vocation as a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Counsel offers no evidence that the beneficiary’s work as a corps helper is contingent on such a demonstration of commitment. The petitioner’s own job descriptions list various requirements for the position, but none of these requirements amounts to a demonstration of commitment comparable to the taking of vows. The duties and terms are considerably more compatible with “employment” in the commonly understood sense of the word, than with undertaking a religious vocation as defined in the regulations.

This decision is not a finding that the beneficiary is permanently and irrevocably ineligible for classification as a special immigrant religious worker. Rather, we find that this particular filing was premature. 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 director’s decision will be affirmed.

**ORDER:** The director’s decision of July 14, 2006 is affirmed. The petition is denied.