

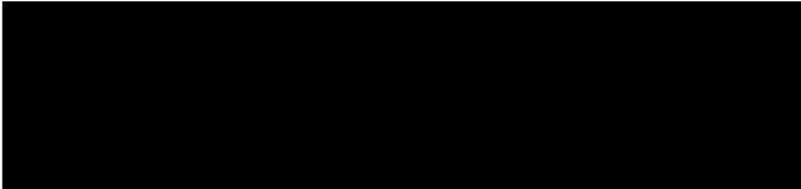
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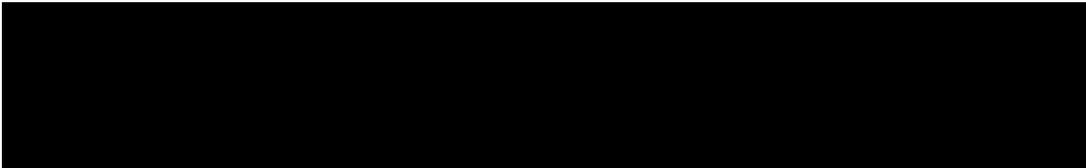
AUG 14 2007

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a Southern 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 a youth and adult minister. The director determined that the petitioner had not established that the beneficiary has worked or will work in a qualifying religious occupation.

On appeal, the petitioner submits a brief from counsel and various documents.

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 principal issue in this proceeding 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.

Pursuant to 8 C.F.R. § 204.5(m)(1), the beneficiary 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 October 24, 2005. With respect to the beneficiary's required two years of experience, the director's findings revolve around a discussion of the nature of the beneficiary's duties, rather than questioning whether or not the beneficiary continuously performed those duties. Therefore, if we determine that the beneficiary's past and future duties amount to a qualifying religious occupation, then we also demonstrate that the beneficiary possesses the necessary experience.

In a letter accompanying the initial filing of the petition, [REDACTED], Pastor of the petitioning church, described the beneficiary's work:

[The beneficiary's] duties include teaching the Baptist faith accurately, completely and consistently to Spanish speaking members of the church. Teaching Sunday school to youth members and showing students how to learn the Baptist faith is the best preparation for living in a community of faith.

[The beneficiary] holds a Bachelors' degree in Early Childhood Education from Chongshin University. After completing her studies in 1994, she took a position as Minister with Bethel Baptist Church in Seoul, Korea. In November 1998[s]he accepted a position as an Evangelist and Sunday school teacher for the United Korean Presbyterian Church in Chile. . . . Additionally, she has been employed as our Youth and Adult Minister since [S]eptember 1, 2003.

Copies of canceled checks and bank statements show that the petitioner regularly paid the beneficiary \$1,543.95 per month since late 2003. A "Certificate of ordination" signed by [REDACTED] indicates that the beneficiary "was ordained by [the petitioning] Church [on] September 1, 2003." The certificate lists the beneficiary's position as "Minister of education (Full-Time Vocational)."

On November 9, 2005, the director issued a request for evidence, instructing the petitioner to submit, among other things, copies of the beneficiary's income tax returns and "a detailed job description of the current proffered position." The petitioner submitted the requested copies of the beneficiary's tax returns and related documents, showing that the petitioning church was the beneficiary's sole source of income. On these returns, the beneficiary consistently identified her occupation as "CLERK."

A weekly work schedule shows the following duties for the beneficiary:

Saturday	Making service bulletin
	Service program
	Summary preach
	Announce Church news
	Description daily Q.T.
	Meeting with Pastor

Sunday	Practicing choir Service for Sunday school teachers Service for Sunday school Part 1: Service for Youth and Children Part 2: Group Bible study Afternoon Service Small group gathering
Monday	Day off
Tuesday	Perform work of church of office Checking (Schedule, papers, documents, mails, etc.) Typing (for services, cell paper of study, meetings, Sunday school, etc.) Copying (pieces for choir, paper for cell, meetings, teachers, deacons, etc.) Adjusting (document, file of computer, bulletin, sending mail, etc.)
Wednesday	Preparing group bible study Wednesday service
Thursday	Teaching Spanish Church's member Preparing Sunday school sermon
Friday	Finding out file for cell meeting Searching documents for Sunday school bible study (Twice per month, cell meeting)

An hourly breakdown indicates that seven hours of the beneficiary's forty-hour work week consists of "Work of office."

In a January 31, 2006 letter, [REDACTED] stated that the beneficiary's "position requires experience in Education Ministry and ordination within the Baptist organization." [REDACTED] added: "This position is a religious occupation since it requires [the beneficiary] to assist the Senior Pastor by providing leadership to the entire educational department of the church. She will lead the planning, evaluation and implementation of a comprehensive program of Baptist Christian education."

A printout from Southern Baptist Directory Services, revised in September 2005, identifies the beneficiary as the petitioner's Minister of Education, Minister of Children and VBS Director, as well as one of the petitioner's two Church Pianists.

The director denied the petition on January 25, 2007, noting the various job titles ascribed to the beneficiary in the record, including the beneficiary's own use of the word "clerk" on her tax returns. The director concluded that these "discrepancies in the petitioner's submission have not been explained satisfactorily." The director also found that "the beneficiary's duties will continue to be more in the secular environment. Thus, it can be determined that the beneficiary's prospective occupation is not a religious one." Because the beneficiary's past work is the same as her intended future work, the director also found that the beneficiary lacked the required experience in a qualifying religious occupation.

On appeal, counsel argues that the “alleged discrepancies are as a result of the wide array of duties [the beneficiary] performs in the church.” Counsel asserts that the beneficiary’s administrative office work “has been incidental to her ministerial work.” The schedule submitted previously supports this assertion, showing that the beneficiary devotes one day of her work week to administrative office functions.

The beneficiary’s description of her own occupation as that of a “clerk” is of legitimate concern, but this by itself is not sufficient to tilt the preponderance of evidence away from a finding of eligibility. The petitioner has submitted credible and consistent documentary evidence of substantial religious education and past experience as a religious worker in Korea. [REDACTED] of the certified public accounting firm of [REDACTED] offers this explanation for the “clerk” designation: “We have prepared the payroll tax reports . . . for [the petitioner] for some years now. In the place for signature we typed clerk in some reports, which is wrong since [the beneficiary] who is the one who signs the reports, is not a clerk. She is the minister.” The record shows that [REDACTED] also prepared the beneficiary’s individual tax returns. It is plausible that, because the beneficiary signed the petitioner’s tax documents, the firm simply presumed her to be a clerk. The petitioner has indicated that the beneficiary and the senior pastor are the church’s only paid employees, and therefore it is reasonable that the beneficiary would have handled the tax documents during the one day each week when she performed administrative tasks.

We note that, in the denial notice, the director correctly observed that the nature of the beneficiary’s duties are much more important than her job title. Here, there appears to have been some confusion based on the use of the word “minister” in the beneficiary’s job title, as well as references to the beneficiary’s “ordination.” Some denominations are considerably more liberal than others in their use of the term “minister.” Not every religious worker with the word “minister” in her title, and holding ordination papers, qualifies as a “minister” for immigration purposes. See *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978). From the overall record, including the description of the beneficiary’s duties, it appears that the beneficiary’s position constitutes a religious occupation, rather than in the vocation of a minister as 8 C.F.R. § 204.5(m)(2) defines those terms.

Upon consideration of the available evidence, we find that the petitioner has demonstrated that the beneficiary’s position consists primarily of qualifying religious duties, and therefore qualifies as a religious occupation. 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 decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.