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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: DEC 12 2007
EAC 06 229 51461

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, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a religious school affiliated with the Chabad Lubavitch Jewish movement. 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 its Judaic programming coordinator and director of the Judaic Enrichment Program in preschool and kindergarten. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel and various exhibits, most of them copies of previous submissions.

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 by the director 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.

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.

The petitioner's initial submission included brochures and other materials containing general information about the petitioning entity, and mentioning the beneficiary in various capacities, but the initial submission contained few details about the nature of the beneficiary's duties. Therefore, on December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to provide "a **detailed description** of the work to be done, including specific job duties" (emphasis in original).

In response to the December 2006 RFE, the petitioner submitted a copy of a "Job Proposal and Description" dated July 15, 2006. Among the duties listed on the three-page document are:

To create a religious curriculum plan for the Hebrew portion of the preschool curriculum. . . .

To develop a religious family program 3 times a year, prior to the Jewish holidays of Chanukah, Purim and Passover, where each teacher will train their class for a holiday presentation for the parents. . . .

This position also includes the duties of teaching Class B. of the Sunday religious school. . . .

To plan, implement and direct the children's prayer services on Saturday and Jewish Holidays.

The position also includes administrative functions involving discipline, classroom supplies, arranging field trips and so on. The document indicates that the job requires "proof of a Hebrew teacher's seminary diploma," which the beneficiary earned from [REDACTED] in 2001.

On March 13, 2007, the director issued a second RFE, and again requested a detailed job description of the beneficiary's position. The director did not discuss the previously submitted description. In response, the petitioner submitted a new job description, dated April 29, 2007, that closely resembles the description submitted previously.

The director denied the petition on June 19, 2007. In the decision, the director partially reproduced the list of the beneficiary's duties, and stated:

The beneficiary's duties do not relate to a traditional religious function. The petitioner failed to provide evidence of how the position . . . relates to a traditional religious function. Though the content of the curriculum may be spiritual or religious, the duties listed are secular. The responsibilities . . . correlate more to an administrative position. The duties that pertain to religious function, at best, occupy less than 50% of the working time.

On appeal, counsel argues that the director cannot reasonably require a total absence of duties that, in isolation, are administrative or otherwise secular in nature, and that the director has understated the religious nature of many of the beneficiary's enumerated tasks. Counsel contends:

[T]he curriculum and Judaic outreach programs at [the petitioning school] are centered on the Jewish faith and therefore the individual tasked with administering the programs must be intimately familiar with the religion's principles. . . .

Although some of the Beneficiary's responsibilities may be secular, the majority of her work is focused on promulgating the Jewish faith through praying, teaching and community outreach. These activities have religious significance and embody the tenets of Judaism. As such, the job constitutes a religious occupation which relates to a traditional religious function.

[REDACTED], Chairman of the petitioning entity, asserts that the beneficiary's "position is entirely religious," and that the petitioner "would not accept curriculum planning by someone who had not obtained a religious degree."

Upon review of the available evidence, we concur with counsel's assertion that the beneficiary's duties are predominantly religious in nature. 8 C.F.R. § 204.5(m)(2) specifically includes religious instructors within the definition of "religious occupation," and the subject matter in which the beneficiary provides instruction and supervises curriculum is intrinsically religious. The beneficiary is more than simply a secular administrator at a school that happens to teach religious content.

For the above reasons, the AAO withdraws the director's finding regarding the sole stated ground for denial. 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.