



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



CI

FILE:

EAC 06 077 51691

Office: VERMONT SERVICE CENTER

Date:

JUN 13 2007

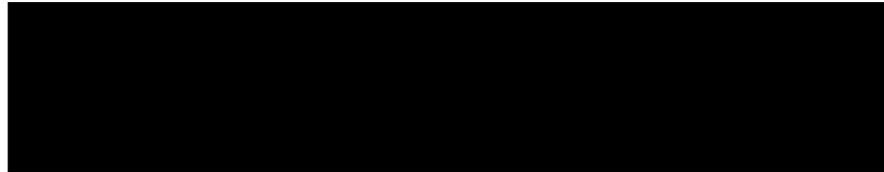
IN RE:

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.

Robert P. Wiemann

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 on appeal. The appeal will be dismissed.

The petitioner is a church of the Assemblies of God denomination. 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 ministry educator. The director determined that the petitioner had not established that the proffered position qualifies as a religious occupation, or that the beneficiary had the requisite two years of continuous work experience as a youth ministry educator immediately preceding the filing date of the petition.

On appeal, counsel asserts that the regulations do not support the director's findings.

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 first issue 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 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], Pastor of the petitioning church, described the beneficiary’s position:

In assisting to motivate the youth to work cooperatively and take responsibilities, the leader will be in the background guiding, counseling, and encouraging the youth, helping them to benefit from the experience and the joys of achievement. It will be necessary to study the youth profile of the church and seek to involve every youth appropriately in the society.

Specifically, the Youth leader will keep in close contact with the pastor and sponsors and shall take advantage of every opportunity for in-service training and leading the society into a cooperative relationship with the church.

In terms of the specific duties undertaken by the Youth Leader, [the beneficiary] will: lead group events, plan and implement religious oriented programs, teach coordinate the setting-up and cleaning-up of activities including the preparation of Christian arts and crafts projects, conduct regular worship and prayer.

On February 22, 2006, the director issued a request for evidence (RFE), instructing the petitioner to “[s]ubmit evidence that the beneficiary’s primary duties in the proposed job require specific religious training beyond that of a dedicated and caring member of the religious organization to establish that they are traditional religious functions above those performed routinely by members” of the congregation. The director also instructed the petitioner to establish “that the beneficiary will be employed full-time in . . . religious work.”

In response, [REDACTED] stated that the beneficiary is required to “[a]ttend all training and workshops provided by the church that would cover all the aspects of Christian education.” In the same letter, [REDACTED] stated that the beneficiary “performs all her duties [on] a voluntary basis,” and that the beneficiary’s duties take up at least “20 hours per week.” While [REDACTED] referred to this work as “full time,” 20 hours per week is not generally recognized as full time work.

Regarding the beneficiary’s intended future work, [REDACTED] claimed that the beneficiary would work 40 hours per week, earning \$10 per hour. [REDACTED] further stated that the beneficiary would “work under the supervision of the Christian education superintendent,” but the superintendent herself is likewise an unpaid volunteer. According to the petitioner, [REDACTED] is the petitioner’s only current paid employee.

The petitioner has submitted materials from the General Council of the Assemblies of God, relating to the A.P.T.O. series. (A.P.T.O. stands for *Adiestramiento Para Todo Obrero*, which the petitioner translated as “Training Every Worker.”)

The director denied the petition on July 17, 2006, based in part on the conclusion that “the past and proposed duties do not require specific religious training and, therefore, does not [sic] qualify as a religious occupation.”

On appeal, counsel argues that the regulations do not support the director’s reliance on a “specific religious training” requirement. Counsel further asserts that the director failed to consider the volumes of A.T.P.O. materials, which establish the existence of an in-depth religious training program for educators within the petitioner’s denomination.

After careful and prolonged consideration of this issue, the AAO finds that the “training” issue has received a disproportionate amount of weight in adjudications of special immigrant religious worker petitions. Obviously, when a given position clearly requires specific training, 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the alien possesses that training; but the issue of training should not be a primary factor when considering the question of whether that position relates to a traditional religious function. Of greater importance is evidence showing that churches or other entities within a given denomination routinely employ paid, full-time workers in comparable positions, and that those positions do not embody fundamentally secular tasks, indistinguishable from positions with secular employers.

Having said the above, and having acknowledged the petitioner’s submission of A.T.P.O. materials, it does not follow that the beneficiary’s work is a *religious occupation* (as opposed to a religious function typically entrusted to unpaid volunteers). Counsel notes the submission of “multiple religious educational manuals and teacher’s guides dating back to 2001.” The beneficiary was not employed as a religious educator in 2001. Rather, she was a full-time student, fully supported by a family with whom she resided (and which does not belong to the petitioning congregation). The beneficiary was, in 2001, and continued to be in 2006, a part-time, unpaid volunteer from the congregation participating in the religious education of the children in that congregation, working under the supervision of an equally unpaid superintendent.

The petitioner has not explained how the beneficiary’s intended future duties will supposedly entail a doubling of the length of her previous schedule. There are references to the preparation of lessons and materials, but these are duties that the petitioner already performs as a part-time volunteer. The petitioner has submitted copies of several teacher guides and other materials published by the General Council of the Assemblies of God, indicating that the materials are obtained pre-packaged from a source outside of the petitioning congregation.

The record contains nothing from the General Council of the Assemblies of God to indicate that churches within that denomination routinely employ paid educators, rather than rely upon volunteers, like the petitioner, who work secular jobs while volunteering at the church part-time. The petitioner did not claim ever to have previously employed a paid worker in the position sought for the beneficiary. The church’s entire educational staff, including the superintendent, has heretofore consisted of unpaid volunteers. Now, at the very time when the beneficiary has completed her college studies, ending her eligibility for F-1 nonimmigrant status, the petitioner seeks immigration benefits on the beneficiary’s behalf, seeking to make her its only paid employee other than the pastor.

For the above reasons, we find that the petitioner has established the religious nature of the beneficiary's educational activities at the petitioning church, but that the petitioner has failed to establish that the beneficiary's position is traditionally a religious *occupation* within the petitioner's religious denomination.

The remaining issue concerns the beneficiary's past experience. 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 January 13, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a youth ministry educator throughout the two years immediately prior to that date.

In a short introductory letter submitted with the petition, [REDACTED] stated that the beneficiary "has occupied many positions thru all these years," but did not elaborate. In a longer letter dated December 20, 2005, [REDACTED] indicated that the beneficiary "has previously worked as a Sunday School teacher for us since 2001," the wording indicating that the beneficiary was still a Sunday school teacher as of late 2005. In describing the beneficiary's intended future work, [REDACTED] consistently refers to the position as "youth leader" and never uses the term "Sunday school teacher." This indicates that the two terms are not interchangeable.

In a separate letter, the petitioner's Sunday School Superintendent, [REDACTED] states that the petitioner has worked "as a children's Sunday School teacher" whose "knowledge and experience has been an asset to our Sunday School program." [REDACTED] Director of the Children's Department at the petitioning church, states that the beneficiary "began working with me as an Assistant Director of Children's Ministry towards the end of 2003. . . . She is my right hand and assists me in all the activities."

The beneficiary, in her own résumé, indicated that she had worked for the petitioning church since 2001 as "Assistant Director of Children's Ministry" and "Sunday School Teacher."

The record indicates that the beneficiary entered the United States as an F-1 nonimmigrant student, and was still an F-1 student when the petitioner filed the petition. The petitioner's initial submission included a Grade Report from William Paterson University, indicating that the beneficiary completed six courses during the Fall 2004 semester. We note that none of the course subjects appear to be intrinsically religious.

A diploma reproduced in the record indicates that the beneficiary graduated from William Paterson University with a B.A. in Psychology in January 2005. Subsequently, in May 2005, the State of New Jersey provisionally certified the beneficiary as an "Elementary School Teacher in Grades K-5." That the beneficiary sought this certification suggests an intention on her part to seek employment as an elementary school teacher. Further supporting this conclusion is a County Substitute Teacher's Certificate issued to the beneficiary in October 2004, authorizing her to teach all subjects at all grade levels in Bergen County, New Jersey. The record indicates that the beneficiary did, in fact, work as a substitute teacher at that county's public schools in 2005.

The beneficiary also claimed to have worked as an “Arts and Crafts Specialist” at Ramapo Country Day Camp, Airmont, New York, in summer 2005, but the record contains no documentation from the camp. The beneficiary further claimed to have worked as an au pair in 2000-2001.

In the February 2006 RFE, the director requested “evidence that establishes that the beneficiary has the continuous two years full-time experience in the . . . religious work for the period immediately prior to January 13, 2006.” The director requested details including “the time spent per week by the beneficiary performing those duties.”

In response, [REDACTED] stated that the beneficiary “has had plenty of full time experience in the religious vocation [*sic*] since the year 2002. . . . She has spent [a] total of 20 hours per week if not more, performing such duties.” [REDACTED] did not explain why 20 hours per week should be considered “full time experience.” As noted above, [REDACTED] stated that the beneficiary had worked as a volunteer. Materials submitted in response to the RFE indicate that the beneficiary was entirely supported by a family living in Upper Saddle River, New Jersey, since her arrival in the United States. A list of members of the petitioning congregation shows that the family does not belong to the beneficiary’s church, and therefore the family’s support of the beneficiary cannot be linked in any meaningful sense to her church work.

The director, in denying the petition, noted that the beneficiary’s past work for the church “was not full time, as the regulations require,” and that the beneficiary has consistently engaged in secular employment. On appeal, counsel states that the regulations do not require that the beneficiary’s experience had been full time.

The legislative history of the religious worker provision of the Immigration Act of 1990 approvingly cites the substantial amount of prior case law relating to special immigrant religious workers, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” H.R. Rpt. 101-723, at 75 (Sept. 19, 1990). This case law includes *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), in which the Board of Immigration Appeals determined that an alien’s unpaid, part-time church work did not constitute continuous engagement in qualifying religious work.

Furthermore, 8 C.F.R. § 204.5(m)(4) indicates that an arrangement in which an alien is solely dependent on outside employment is not a qualifying job offer. The petitioner has never contested that the beneficiary was, in fact, wholly dependent on outside income prior to the filing of the petition. We conclude that the beneficiary’s uncompensated, part-time religious work was not “continuous” in the sense contemplated in the statute, regulations, and binding case law.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.