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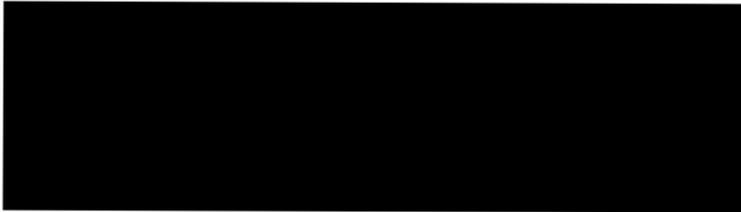
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: SRC 06 223 53092 Office: CALIFORNIA SERVICE CENTER Date: **APR 17 2008**

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:

SELF-REPRESENTED

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, California Service Center, denied the employment-based immigrant visa petition. The director certified the decision to the Administrative Appeals Office (AAO) for review. The AAO will affirm the director's decision.

The petitioner is variously described as a "lifestyle center," a "hospital," and "a supporting ministry of the Seventh-day Adventist Church."¹ 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 lifestyle counselor/instructor. The director determined that the petitioner had not established that the beneficiary's position amounts to a religious occupation, or that the beneficiary had the requisite two years of continuous work experience as a lifestyle counselor/instructor immediately preceding the filing date of the petition.

The director issued the certified denial on August 15, 2007, and allowed the beneficiary 30 days to supplement the record. To date, the record contains no further submission from the petitioner. The AAO therefore considers the record of proceeding to be complete.

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 of concern is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) contains the following pertinent definitions:

¹ The record shows that the Internal Revenue Service has classified the petitioner as a "school" for tax purposes.

Religious occupation means 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.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering the beneficiary qualifies as a religious occupation or vocation as defined at 8 C.F.R. § 204.5(m)(2). The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services (CIS) 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.

Further, while the determination of an individual’s status or duties within a religious organization is not under the purview of CIS, the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607, 608 n.2 (BIA 1978).

In a letter accompanying the initial submission, [REDACTED] Vice President of the petitioning entity, described the beneficiary’s position:

[W]e desire to have [the beneficiary] continue the duties as Religious and Health instructor in our College of Health Evangelism on a permanent basis dealing with those who come here for their physical and spiritual needs. In this position she shares spiritual principles and counsels with regard to a healthful diet. . . . There is also a teaching kitchen where lifestyle educators in training are taught the intricacies of vegan cuisine. She gives orientation and instruction to workers and students on how to prepare interesting and appetizing meals. She performs administrative duties that enhance [the petitioner’s] ability to properly carry out its mission. . . . She is also a therapist and works some shifts a week in the hydrotherapy department.

The record shows that the petitioner has issued the beneficiary certificates in “Health Evangelism,” “Hydrotherapy” and “Massage.” Church publications excerpted in the record include discussions of scriptural passages interpreted to pertain to diet and health.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit “a **detailed description** of the work to be done, including specific job duties” (emphasis in original). In response, Mr. Ferreira provided this breakdown of daily duties:

8:00 – 8:30	Attend morning worship
8:30 – 10:00	Instruction on various aspects of correct diet and its positive effects on health – how to counter various degenerative diseases such as diabetes, obesity, hypertension, heart disease, allergies, arthritis, cancer, etc. pointing out the use of God’s natural remedies and the use of correct diet.
10:00 – 1:00	Supervision of and instruction on preparation of balanced, interesting, appetizing vegan meals.
1:00 – 3:00	Personal Lunch Break
3:00 – 4:00	Hydrotherapy treatments to out patients explaining the benefits of each treatment. Explain the effect of faulty diet upon one’s health and encourage the patient to make some changes.
4:00 – 4:30	Prepare for next treatment
4:30 – 5:30	Hydrotherapy and massage treatments as required. During treatment counseling can take place providing comfort and spiritual support for those suffering from depression and emotional instability
5:30 – 6:00	Finish off treatments. Tidy up, clean and disinfect treatment rooms.

stated that the beneficiary “has been asked to increase her hours in Hydrotherapy,” and that the beneficiary “will be giving many and varied hydrotherapy treatments and Swedish massage treatments as prescribed by the doctors.”

On March 14, 2007, the director issued a second RFE, instructing the petitioner to “[d]escribe how each of the duties of the beneficiary is religiously oriented” and to submit corroborating evidence. In response, the petitioner claimed that its work arrangements make the petitioner similar to “a religious order.” Three of the petitioner’s officials stated, in a jointly signed letter: “Every duty of every worker is considered a part of our traditional religious function,” including “the farmer, the janitor, the maintenance worker” and others, because every worker has some impact on the atmosphere and on each patient’s experience.

8 C.F.R. § 204.5(m)(2) defines “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. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters. The petitioner has not shown that its workers make any formalized commitment, comparable to the taking of vows, when accepting positions at its facility. A sense of personal dedication does not suffice in this regard. Therefore, the petitioner’s efforts to compare itself to a religious order, and the beneficiary’s work to a religious vocation, are not persuasive.

The director denied the petition, stating that the beneficiary's work "consistently appears to be secular employment which sometimes has incidental religious activity attached." We now consider the director's certified decision.

The petitioner's claim that "every worker" performs a "traditional religious function" is overly broad. While this observation does not directly relate to the beneficiary's circumstances, we note that the petitioner's claim that "the janitor [and] the maintenance" each perform a "traditional religious function" cannot override the plain wording of 8 C.F.R. § 204.5(m)(2), which excludes janitors and maintenance workers from the definition of "religious occupation." We acknowledge the sentiment that one's religious beliefs should infuse and inform all of one's daily activities, but it does not follow that any given activity, whatever its nature, can become a religious activity if performed in the proper spiritual mindset. We must consider the beneficiary's specific duties, rather than the petitioner's overall religious mission.

Returning to the daily schedule reproduced earlier in this decision, the only element with a facially religious nature is attendance at morning worship services. Such attendance, however, amounts to passive rather than active involvement in a religious activity. If mere attendance at religious services were held to be a qualifying religious function, then whole congregations would become eligible for special immigrant religious worker classification simply by virtue of their appearance at regular services. The petitioner cannot transform a worker who performs essentially non-qualifying secular functions into a religious worker simply by mandating the worker's attendance at worship services.

Apart from the beneficiary's attendance at morning worship services, the beneficiary's stated duties involve teaching diet and cooking classes and providing hydrotherapy and Swedish massage. Dietary concerns can certainly have a religious component to them, as shown by the kosher and halal rules of, respectively, Judaism and Islam. The petitioner's submissions, however, do not show that the Seventh-day Adventist Church embraces strict dietary laws. The materials in the record, such as excerpts from *Seventh-day Adventists Believe . . .*, are generally worded more as recommendations and guidelines, often with the emphasis on health rather than religious or divine mandate. Furthermore, even given strict dietary rules, it does not follow that everyone involved in the chain of preparation or sale of such foods, or of recipes for them, performs a traditional religious function.

As for hydrotherapy and Swedish massage, neither of these techniques appears to be uniquely religious either in origin or in execution. The petitioner has not explained how these activities relate to traditional religious functions in the Seventh-day Adventist denomination, and grouping them under the umbrella term "Health Evangelism" does not suffice in this regard. The petitioner has not shown the extent to which the beneficiary's duties are exclusively Adventist or otherwise inherently religious in nature. Furthermore, the record is silent as to the religious makeup of the petitioner's clientele. Promotional brochures and fliers in the record do not mention the Seventh-day Adventist Church by name or indicate that the petitioning facility is tailored for Adventist patients who seek care that conforms to Adventist beliefs.

Taking the above factors into consideration, the AAO concludes that the petitioner has not met its burden of proof to establish that the beneficiary's duties relate to a traditional religious function and constitute a qualifying religious occupation.

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 July 18, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a lifestyle counselor/instructor throughout the two years immediately prior to that date.

In his initial letter, [REDACTED] stated that the beneficiary "is employed in a conventional sense of full time, salaried employment, which is her primary endeavor and means of financial support." [REDACTED] stated that the beneficiary's annual compensation is "\$6450.00 per year . . . which includes housing and utilities." (The petitioner has since clarified that the \$6,450 sum did not cover all of the petitioner's expenses; the petitioner met the beneficiary's various material needs, but not all of these expenses were reflected on payroll documents.) The petitioner submitted copies of monthly pay stubs from throughout the qualifying period, showing that the beneficiary first received base pay of \$295 (as a "Jr. Volunteer") later increased to \$325 (as a "Volunteer"), \$130 in food allowance, and \$100 in rent allowance canceled out by a \$100 rent deduction, indicating that the beneficiary resided in petitioner-owned housing.

In the December 2006 RFE, the director requested "evidence of the beneficiary's work history for the years 2004, 2005 and 2006," including specific details regarding duties and compensation. In response, the petitioner submitted additional copies of the beneficiary's monthly pay stubs. [REDACTED] asserted that the beneficiary was paid by check and "did not work on a volunteer basis."

A copy of the petitioner's Internal Revenue Service Form 990 return for 2005 includes the statement: "All of our workers are volunteers and are given a small stipend. Housing + utilities are supplied. A food budget is given to be used at our on-campus commis[s]ary."

In the March 14, 2007 RFE, the director requested additional evidence regarding the beneficiary's work history, including tax documents and specific documentation of the beneficiary's compensation. In response, three officials of the petitioning entity stated in a joint letter that the petitioner "has never functioned as an employer," and therefore does "not issue W-2s or 1099s, file W-3s or Quarterly Wage Reports." Internal reports show payments to the beneficiary and numerous other workers at the petitioning facility in 2006 and 2007.

The director, in the denial decision, stated that volunteer work is not qualifying experience, and concluded that "the petitioner's position that they are not an employer, would negate the petitioner's claim that the beneficiary has worked continuously for the two year period prior to the filing of the petition."

The AAO acknowledges the petitioner's use of the term "volunteer" to describe the beneficiary's position, but we cannot ignore that this word "volunteer" is printed on an uninterrupted series of pay stubs. 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). Here, the beneficiary resides in housing provided by the petitioner, receiving small but regular paychecks in exchange for her work. The petitioner's use of the terms "volunteer" and "stipend" instead of "employee" and "salary" do not negate the existence of an arrangement whereby the beneficiary works for the petitioner in exchange for financial and material support. Therefore, the AAO cannot agree with the director's conclusion that the petitioner's use of the term "volunteer" automatically disqualifies the petitioner.

Nevertheless, there remain issues that prevent the AAO from overturning this element of the director's finding. On September 12, 2005 the petitioner filed a Form I-129 petition to extend the beneficiary's classification as an R-1 nonimmigrant religious worker. In the I-129 petition, the petitioner stated that the beneficiary would work full-time, 40 hours per week, earning "a stipend of \$16,000.00 per annum." Thus, the documented level of the beneficiary's actual annual compensation is almost \$10,000 short of the amount stated in the nonimmigrant petition.

On March 10, 2008, the AAO advised the petitioner:

If \$16,000 is the annual pay rate for full-time work, then the beneficiary's current annual pay rate of \$6,450 is not consistent with continuous, full-time work. If, on the other hand, \$6,450 is the full-time annual pay rate, and your organization never paid or intended to pay the beneficiary \$16,000 per year, then the I-129 petition contains false statements.

Your organization's contradictory claims about the beneficiary's rate of compensation raise questions of credibility. This notice is to give your organization an opportunity to satisfactorily resolve those questions. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

In response, [REDACTED] states that the earlier assertion that the beneficiary's compensation of "\$6450.00 per year . . . includes housing and utilities" was incorrect. [REDACTED] claims that the \$6,450 figure included a food allowance and a cash stipend, but not rent, utilities, medical benefits, or other forms of non-cash compensation, and that the beneficiary's total compensation equaled or exceeded \$16,000 per year. Despite the AAO's advisory information regarding *Matter of Ho*, the petitioner's explanation included no independent objective evidence, therefore leaving the conflict unresolved.

The AAO affirms the director's second finding that the petitioner has not established that the beneficiary worked continuously for the petitioner throughout the two-year qualifying period. This is not a finding of fact that the beneficiary did not work, but rather a procedural finding that the petitioner has not met its burden of proof in this regard.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The director's decision of August 15, 2007 is affirmed. The petition is denied.