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U.S. Citizenship
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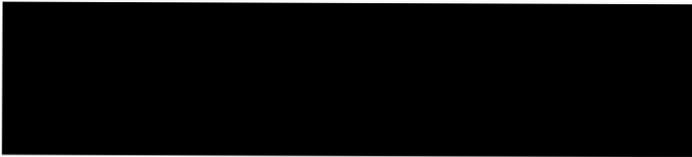


FILE: EAC 06 146 51767 Office: VERMONT SERVICE CENTER Date: **AUG 20 2008**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: 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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 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 web master and computer network administrator. The director determined that the petitioner had not established that the position qualifies as that of a religious worker.

On appeal, counsel asserts that the director erred in determining that the beneficiary's services are not directly related to the creed and practice of the religion.¹ Counsel submits a brief and additional documentation in support of the appeal.

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 issue presented on appeal is whether the petitioner has established that the position qualifies as that of a religious worker.

¹ Counsel also asserts that the director determined that the petitioner did not offer the beneficiary full-time employment. However, that was not a basis for the director's denial of the petition and the issue will not be addressed in this decision.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation, which is defined at 8 C.F.R. § 204.5(m)(2) as follows:

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.

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 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.

In its April 12, 2006 letter accompanying the petition, the petitioner stated that, as web master and computer network administrator:

[The beneficiary’s] primary responsibility will be the creation, design and maintenance of our state-of-the-art Tabernacle web site homepage and its affiliated internet websites through the use of digital and graphic media arts applications. He will also maintain, upgrade, and research computing systems to ensure that the system remains in a state-of-the-art environment . . . All the computer systems are networked through the main servers, which function as a database pool for financial records and information database for more than 3,500 parishioners and individuals associated with the ministry. This information is heavily relied upon to provide spiritual care for our parishioners and attendees.

As Web Master and Computer Network Administrator, [the beneficiary] will consistently monitor the homepage and process viewer feedback. His specific duties will include videoconferencing, chat rooms, product pages, broadcasting, and animated graphics. He is responsible for communicating the spiritual and social message of the Tabernacle by creating a unique, interactive presentation. This ministers to our current parishioners but also attracts new viewers and seeks to establish a base of internet followers. [He] will report directly to the Director of Communications and will be extensively involved with all media-creative decisions. . . .

The position of Web Master and Computer Network Administrator is a “Religious Professional” position. The regulations at 8 C.F.R. § 214.2(r)(2) define “Professional Capacity” as “an **activity in a religious vocation or occupation** for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required” (Emphasis added).

The position of Web Master and Computer Network Administrator is a “Religious Professional” position because it requires a Bachelors Degree and because it is a Religious Occupation. [Emphasis in the original.]

The petitioner stated that all of the examples of religious occupation enumerated in the regulation “revolve around communication of a religious message,” and that “examples of occupations that are excluded from classification as ‘Religious Occupations’ are those that do not involve communication of the gospel message.” The petitioner concluded, therefore, that the position of web master and computer network administrator “falls squarely in the group of ‘Religious Occupations’ outlined in the regulations because it is all about communication through a very dynamic medium.”

Counsel advances the same argument on appeal. However, the argument is without merit. All of the duties associated with the position are technical in nature. The petitioner identifies no duty that involves an element of religious knowledge or adherence to a specific religious code. There is no indication that the beneficiary will be responsible for the religious content of the website or is otherwise responsible for the religious message conveyed through the site. If one accepted the argument of petitioner and counsel, then one would have to accept that those who maintain or use telecommunications equipment, audiovisual equipment, or computer equipment, each of which could be involved in the dissemination of religious messages, are also religious workers. Clearly, these would fall into the group of nonreligious workers identified by the regulation. The regulation also specifically excludes clerks from those who are religious workers. However, under the petitioner’s argument, these individuals could also be involved in the communication of religious messages.

We concur with counsel that no specific religious training is necessary for a position to be classified as that of a religious occupation, and we withdraw the director’s statement to the contrary. However, the petitioner has submitted no evidence that the proffered position relates to a traditional religious function and that it is not entirely secular in nature.

Accordingly, the petitioner’s evidence does not establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

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.