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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

WAC 07 031 50596

Office: CALIFORNIA SERVICE CENTER

Date:

JAN 10 2008

IN RE:

Petitioner:

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, California 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 church of the Roman Catholic 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 the petitioner's director of Religious Education and Evangelization.¹ The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the beneficiary qualifies for the position, or that the position constitutes a religious occupation relating to a traditional religious function.

On appeal, the petitioner submits arguments from its representative as well as copies of 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 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

¹ The petitioner originally stated the beneficiary's job title as "Pastoral Associate," but changed this title in later correspondence.

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 November 14, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a director of religious education and evangelization throughout the two years immediately prior to that date.

The record shows that the beneficiary received an R-1 nonimmigrant religious worker visa, issued July 15, 2002, authorizing him to work for three years at the Catholic Pastoral Center, El Paso, Texas. The initial submission contained nothing from the Catholic Pastoral Center to explain the relationship between the center and the petitioning church.

The beneficiary, on his income tax returns,² identified his occupation as “director” and reported earning \$13,965 in 2003 and \$16,888 in 2004. Internal Revenue Service Form W-2 Wage and Tax Statements identify the petitioner as the source of all these reported earnings.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit “evidence of the beneficiary’s work history for the years 2004, 2005 and 2006,” including details of duties performed and documentary evidence of compensation. In response, [REDACTED] Pastor of the petitioning church, stated that the beneficiary had worked 40 hours per week at the petitioning church “since July 20, 2002.”

The director issued a second RFE on April 9, 2007, again requesting evidence of the beneficiary’s past employment, including documentation of compensation throughout the qualifying period. In response, the petitioner submitted copies of tax documents showing that the petitioner paid the beneficiary \$19,760 in 2005 and \$20,800 in 2006. [REDACTED] stated that the beneficiary “has been an employee of this parish . . . since July 20, 2002,” and that the beneficiary “works 40 hours a week and receives a salary of \$10.00 per hour.”

The director denied the petition on June 21, 2007, stating that the beneficiary’s tax returns “were not properly signed and show no evidence of filing,” and that the other documents show that the petitioner has paid the beneficiary, but do not show that the beneficiary worked full-time in the duties described in the petition.

On appeal, [REDACTED] asserts that the beneficiary has worked 40 hours per week for the petitioner since 2002. [REDACTED] had previously asserted that the petitioner pays the beneficiary \$10 per hour. The Forms W-2 submitted previously show amounts consistent with 52 40-hour weeks at \$9.50 per hour in 2005, and at \$10 per hour in 2006. Copies of pay stubs are also consistent with the beneficiary’s receipt of gradually increasing hourly wages. The record contains nothing to show that the beneficiary’s duties at the petitioning church have ever varied from [REDACTED] consistent descriptions thereof.

² We note that, although the beneficiary was married in 2003 and 2004, and his spouse entered the United States with the beneficiary as an R-2 nonimmigrant, the beneficiary filed his income tax returns as a “head of household” rather than as “married.”

In the absence of any materials that would detract from the credibility of the petitioner's documentary evidence and consistent assertions, we find that the petitioner has met his burden of proof by a preponderance of evidence with respect to the beneficiary's past performance of full-time, compensated work at the petitioning church continuously throughout the qualifying period. The AAO withdraws the director's adverse finding in this regard.

The remaining issues are somewhat interrelated. 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.

8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the beneficiary is qualified in the religious occupation and that the type of work to be done relates to a traditional religious function.

In a letter accompanying the initial filing, _____ stated:

[The beneficiary] is entering the United States to work in a religious occupation . . . involved in liturgical work, religious instruction, pastoral care, music and cantor ministry, and catechesis. [The beneficiary] will be employed as a Pastoral Associate coordinating religious formation education and evangelization programs. . . .

[The beneficiary], as a religious non-professional, is qualified to perform the traditional religious function for this occupation by virtue of his seminary education and post-seminary training.

The petitioner submitted a translated copy of a "Philosophy Certificate," showing that the beneficiary earned a bachelor's degree in Philosophy from the Universidad del Valle de Atemajac in Guadalajara, Mexico, in 1999. The documentation did not indicate that this institution is a seminary.

The initial submission contained few details about the intended occupation. In the first RFE, issued in December 2006, the director requested further information about the job. In response, _____ provided an outline of the beneficiary's duties:

- I. Coordinate Religious Education
 1. Prepare approximately 300 students every year to receive First Holy Communion.
 2. Prepare approximately 200 students every year to receive Confirmation.
 3. Organize retreats, courses and conferences for parents and godparents.
 4. Direct the adult groups who are preparing to fully receive the Sacraments of Initiation.
 5. Motivate the continuing growth of the community at the family and group level.
- II. Advance evangelization programs

1. Organize annual evangelization retreats.
 2. Help with the permanent formation and continuity of the small communities that result from evangelization retreats.
 3. Coordinate and encourage all members of each community through weekly catechizes [sic].
- III. Advancement of ministries
- 1 Study and implement programs for the permanent education of the ministers of the community.
- IV. Liturgy
1. Prepares Eucharistic Ministers and Lectors by organizing monthly meetings for teaching in both Liturgy and ministry preparation.
 2. Performs Liturgy of the Word for quinceañeras and funerals.

An accompanying work schedule shows duties such as “Attend to parents of the C.C.E. program,” “Organize Catechism programs,” and “Supervise First Communion and Confirmation classes.”

In the second RFE, the director requested “a **detailed description**” (director’s emphasis) of the position, and an explanation of how the beneficiary’s duties relate to a traditional religious function. The director also requested “the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements.” In response, Rev. Uribe listed the following duties of the beneficiary’s position:

- Developing and preparing Catechism programs for parents, children and youth family members.
- Training and guiding catechist instructors.
- Organizing workshops and retreats so that parents may commit themselves in the community and be active in their children’s religious education.
- Organizing programs for the Spiritual growth of both the youth and adults.
- Training and guiding groups of people who participate in different Church ministries.
- Promoting and organizing choir groups for different community services or events.
- Coordinating retreats and workshops to help with one’s personal encounter with God and commit themselves in helping out the community.
- In charge of forming small communities that meet for reflection on the Word of the Lord.

In this letter, _____ did not state the job’s minimum qualifications or submit evidence that the beneficiary meets those requirements.

The director, in denying the petition, listed some of the functions discussed above, and concluded that, while “the content of the programs are [sic] religious in nature,” the beneficiary’s “key duties . . . are secular,” indistinguishable in their general characteristics from non-religious “leadership positions.” The director added: “The petitioner has failed to establish that the beneficiary is authorized to work as a Religious Education Director and its relation to [a] traditional religious function has not been substantiated.”

On appeal, [REDACTED] states that the beneficiary's "position . . . requires formal education in philosophy and biblical studies (he was [in] the seminary, studying four years, after high school)." The petitioner submits a translated transcript from the Seminario Conciliar de Ciudad Juarez, Mexico, indicating that the beneficiary studied there from 1989 to 1992. The transcript lists philosophical and theological topics. This documentation does not support [REDACTED]'s specific claim that the beneficiary studied for four years at the seminary, but the seminary transcript and the earlier certificate from another institution appear to establish four years of postsecondary education in theology and philosophy combined. The documentation is entirely consistent with [REDACTED]'s earlier assertion that the beneficiary's postsecondary education, including at the seminary, qualify him to work in his present capacity.

With respect to the religious nature of the work, the beneficiary's activities as described are intimately involved with catechism and other religious education, and other clearly religious activities. We do not share the director's finding that, because the beneficiary played a leadership role in these activities, he was essentially a secular administrator overseeing activities that, in turn, merely happened to be religious in nature. Given the context, the religious nature of the subject matter is inseparable from the beneficiary's role. Religious education is a religious function, and the beneficiary's duties, as described, have a sufficient relation to the religious subject matter to qualify him for the classification sought.

Pursuant to the above discussion, the AAO finds that the petitioner has shown the beneficiary's position to be a religious occupation, and that the beneficiary is qualified to hold that position. The AAO withdraws the director's finding to the contrary.

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.