

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

C1



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 07 2008
WAC 07 008 53269

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:
[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 employment-based immigrant visa petition was denied by the Director, California 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 religious education director. The director determined that the petitioner had not established that the position qualifies as that of a religious worker or that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner had not established that the beneficiary was qualified for the proffered position.

On appeal, the petitioner submits additional documentation.

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

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.

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 October 3, 2006 letter accompanying the petition, the petitioner outlined the duties of the proffered position as follows:

- 1) Planning, organization and directing religious education programs for congregation members and counsel members concerning personal problems (15 hours per week)
- 2) Analyzing member participation and needs for religious education (10 hours per week)
- 3) Counseling youths (10 hours per week)
- 4) Promoting youth participation in congregational activities (average 5 hours per week)

The total hours per week will be at least 40 to 45 hours.

The petitioner also stated that in the tradition of its church and denomination, religious education directors are considered an essential religious function. The petitioner also stated that the beneficiary would be compensated at a rate of \$25,000 per year.

In a request for evidence (RFE) dated December 11, 2006, the director instructed the petitioner to submit a detailed description of the work to be done in the position, including the number of hours per week to be spent performing each duty and the terms of payment for the services. In a January 30, 2007 “certificate of employment,” the petitioner reiterated the terms and conditions of employment as outlined above. However, it did not provide a more detailed work schedule for the beneficiary.

In a second RFE dated March 13, 2007, the director again instructed the petition to submit a detailed description of the work to be performed in the position, including the number of hours per week that the beneficiary is expected to spend performing the duties, and to explain how the duties related to a traditional religious function. In response, the petitioner submitted a copy of its by-laws describing the position and duties of the religious education director. The by-laws list the minimum education level as four years of college education in divinity, theology or bible.

The bylaws listed the duties of the position as follows:

1. Oversees the general functioning of the educational and the spiritual program.
2. Plans, organizes, and directs the material according to the needs of the educative division.
3. Supervises the instructional staff and determine budget priorities.

The bylaws also indicated that the religious education director visits church members, “preparing and counseling them before receiving sacraments.”

The director denied the petition, stating that the petitioner had failed to provide a weekly schedule and timetable for the beneficiary’s duties, and that the total number hours expected to be worked in the position was no more than 30. The director determined that the petitioner had not provided evidence of the number of hours that the beneficiary would be engaged in counseling, and that the included duties of overseeing, planning, organizing, directing and supervision were secular in nature. The director concluded that, while “the content of the educational programs is religious in nature; the actual functions of the position . . . are secular.” The director therefore determined that the petitioner had failed to establish that the position of religious education director involves a traditional religious function, and denied the petition on June 19, 2007.

On appeal, the petitioner submits a weekly work schedule for the beneficiary as religious education director, and lists the duties as follows:

Monday

Break

Tuesday

6:00am	Morning Prayer
9:00am	Daily Service for Church Staffs
10:00am	Planning Committee (Weekly/Monthly Planning and Reporting)
1:00pm-5:00pm	Evangelization Meeting (Regional/Neighbor/Parishioner’s Home)

Wednesday

6:00am	Morning Prayer
9:00am	Daily Service for Church Staffs
10:00am	Run Bible Study Group
1:00pm-5:00pm	Visiting Absentees/Spiritual Letter Writing to Members

Thursday

6:00am	Morning Prayer
9:00am	Daily Service for Church Staffs
10:00am	Run Bible Study Group
1:00pm-5:00pm	Leading Prayer Meeting

Friday

6:00am	Morning Prayer
--------	----------------

9:00am	Daily Service for Church Staffs
10:00am	Visiting the Sick/Absentees/Families with Problems for Spiritual Education & Counseling
1:00pm-5:00pm	Spiritual Education for lay leaders and Choir Group
7:00pm-9:30	Friday Prayer Meeting

Saturday

6:00am	Morning Prayer
9:00am	Daily Service for Church Staffs
10:00am	Preparation for Sunday Service
1:00pm-3:00pm	Preparation for Sunday Bible Study Groups
3:00pm-5:00pm	Meeting and Training for Sunday School Teachers

Sunday

6:00am	Morning Prayer
9:00am	Korean Language Bible Class
10:00am	Sunday School and Sunday Service
2:00pm	English Ministry for Korean-American
4:00pm-5:00pm	Education Program for New Members & Fellowship

The director determined that while the content of the programs the beneficiary directs is religious in nature, the religious education director's duties are secular. This conclusion cannot be supported. This interpretation is analogous to finding that the principal of a school is not involved in education because he or she does not teach in the classroom. In its October 3, 2006 letter, the petitioner stated that the duties of the position consisted of 25 hours per week in planning, organizing, and analyzing member participation and needs for religious education programs. Counseling and the promotion of youth participation in congregation activities comprised an additional 15 hours per week. These duties are not inconsistent with those outlined in the petitioner's bylaws. The petitioner stated that the duties of the position will encompass 40 to 45 hours per week and will be compensated at the rate of \$25,000 per year.

Nonetheless, the detailed schedule of the duties provided on appeal does not support the list and hours dedicated to the duties outlined in the petitioner's October 2006 letter and bylaws. The detailed schedule of duties does not reflect the substantial number of hours required by the bylaws or the petitioner's letter to be devoted to organizing and directing the petitioner's educational program. The weekly schedule identifies only one planning meeting, scheduled for one to two hours on Tuesday. The detailed weekly schedule includes no time for budget activities as required by the bylaws. Further, nothing in the detailed weekly schedule corresponds with the duties involving the youth of the church as outlined in the petitioner's October 2006 letter.

Accordingly, based on the conflicting information provided by the petitioner regarding the nature of the duties of the position, the petitioner has not established that the proffered position is a religious occupation within the meaning of the statute and regulation.

The second issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition. The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on October 6, 2006. Therefore, the petitioner must establish that the beneficiary was continuously working in qualifying religious work throughout the two-year period immediately preceding that date.

The petitioner did not indicate any prior work experience for the beneficiary in its October 6, 2006 letter accompanying the petition. It stated that the beneficiary received his master’s degree in divinity on May 15, 2004. The petitioner also submitted copies of a Form W-2, Wage and Tax Statement, for the years 2004 and 2005 issued to the beneficiary by the New York Plainview United Methodist Church in Plainview, New York; and copies of checks made payable to the beneficiary by the New York Plainview United Methodist Church, with dates in 2004, 2005 and 2006. The petitioner submitted no information on the work performed by the beneficiary for the Plainview church. In her December 11, 2006 RFE, the director instructed the petitioner to:

Provide evidence of the beneficiary’s work history from the years 2004, 2005 and 2006. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer’s name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

In its February 13, 2007 response, the petitioner stated that the beneficiary’s prior work experience was with an affiliated church, the New York Plainview United Methodist Church. The petitioner submitted a November 15, 2006 letter from the Reverend [REDACTED], who identified himself as the senior pastor of the New York Plainview United Methodist Church. The letter certified that the beneficiary “has been a Religious Education

Director” of the church for four years. Reverend [REDACTED] did not outline any job duties or responsibilities of the beneficiary as the education director for the New York Plainview United Methodist Church. The petitioner also resubmitted copies of the checks and the Forms W-2 issued to the beneficiary by the Plainview church.

On appeal, the petitioner submits a letter from the New York Plainview United Methodist Church, certifying that the beneficiary had worked for the church as an R-1 nonimmigrant from June 1, 2004 to June 30, 2006, and outlined the job duties of the position. We note that the duties and hours dedicated to those duties mirror those outlined in the petitioner’s October 2006 letter.

The letter from the Plainview church also indicated that the beneficiary was paid \$25,000 for his first year of work and \$27,000 for the second year. However, the Forms W-2 issued to the beneficiary do not correspond with the salary the church alleged that it paid the beneficiary. The 2004 Form W-2 shows the church reported wages of \$7,200, while the 2005 Form W-2 shows the church paid the beneficiary \$18,400. On appeal, the petitioner states that the difference in the reported wages occurred because the beneficiary only worked for seven months in 2004. However, that would not explain the significant difference in the salary that it claimed to have paid to the beneficiary in 2004 (\$25,000) and the amount reported on the 2004 Form W-2 (\$7,200). Had the beneficiary worked on a full time basis in 2004 for the wages indicated, his Form W-2 should have reported wages paid of at least \$14,580. Additionally, copies of the checks from the Plainview church reveal that it paid the beneficiary monthly from April 2004 through August 2005. The church also paid the beneficiary a \$5,000 bonus in December 2005, and began paying him again in January 2006. There is no evidence that the beneficiary received payment for his services from September through December 2005 and no evidence that he actually worked during that four-month period.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, 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.” See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term “continuously” also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns,

monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

The petitioner has submitted insufficient evidence to establish that the beneficiary continuously worked as a religious education director on a full-time basis during the two years immediately preceding the filing date of the petition. While the petitioner's bylaws outline the duties of a religious education director and the position description may be the same within affiliated churches, the bylaws do not require specific hours devoted to each task. Further, the evidence does not establish that the beneficiary worked in any capacity for the petitioner or the New York Plainview United Methodist Church from September to December 2005. The Plainview church's payment of a bonus in December 2005 is unexplained and could have been for services performed during any given part of the year.

Accordingly, the petitioner has not established that the beneficiary worked continuously as a religious education director for two full years immediately preceding the filing of the visa petition.

The director also questioned whether the beneficiary was qualified for the position, stating that the bylaws require the religious director to have completed 340 hours of religious training. However, the director quoted the requirements for the position listed in the bylaws as "educational evangelist." The record includes a copy of a May 15, 2004 certificate reflecting that the beneficiary received a master of divinity degree from the New York Theological Seminary. As the petitioner stated that the minimum qualification for the position is a bachelor's degree, the beneficiary appears to be eligible for the position as stated in the bylaws. Therefore, we withdraw this finding by the director.

Nonetheless, as the petitioner has not established the nature of the proffered position, it has not established that the position is a religious occupation within the meaning of the statute and regulation. Further, the petitioner has not established that the beneficiary has the required two-year experience in a qualifying religious occupation or vocation.

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.