

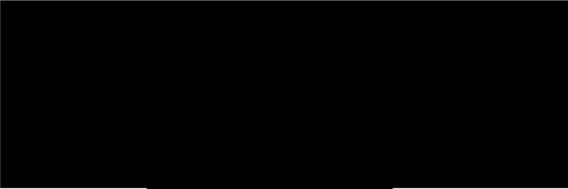


U.S. Citizenship
and Immigration
Services

C1

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



FILE: [Redacted] WAC 07 003 50170

Office: CALIFORNIA SERVICE CENTER

Date: SEP 04 2008

IN RE: Petitioner:
Beneficiary:



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
for 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 community center. 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 an Israeli folk dance instructor. The director determined that the petitioner had not established that the position qualifies as that of a religious worker and therefore the petitioner had not established 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.

On appeal, counsel submits a brief and 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 issue presented on appeal is whether the petitioner has established that the 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 September 27, 2006 letter accompanying the petition, the petitioner stated that, in the proffered position, the beneficiary choreographs and teaches Israeli folk dance, and coordinates the annual Yachad festival. The petitioner further stated:

The Israeli dances and techniques [the beneficiary] teaches will combine several aspects of Judaism, including religion, history, culture, and tradition. Indeed, the teaching of Jewish dance requires a profound understanding of the Jewish religious and cultural experience, especially the music, drama, history and heritage of the Jewish people . . . In addition, to accompany the dances, [the beneficiary] will carefully select Jewish songs used in religious prayer, thereby imparting traditional Jewish religious concepts to her students.

In a request for evidence (RFE) dated February 27, 2007, the director instructed the petitioner to “[p]rovide documentary evidence, i.e.; official Rabbinical Counsel doctrine, indicating that the proffered position is a traditional religious function within Judaism.” In response, the petitioner submitted documentation regarding dance in the bible and in Jewish history and culture. Counsel also cited to an AAO decision which held that a Jewish program coordinator was a religious occupation. Counsel asserted that the position of dance instructor “bear[s] an even stronger relation to a ‘traditional religious function’ than the duties of the Jewish Program Coordinator” because the dance instructor’s duties “require a more in-depth knowledge of Judaism as she **directly imparts a rich Jewish education to the participants in [the petitioner’s] religious dance program.**” [Emphasis in the original.]

We note first that unpublished AAO decisions are not binding in the administration of the Act. *See* 8 C.F.R. § 103.3(c). Further, the petitioner has provided no evidence of religious education provided by the beneficiary. In an undated letter, Roger Weiger, the petitioner’s Israeli dance director, stated:

Jewish Traditions and Culture can be transmitted in various ways, through history, documents songs, and most certainly through dance – When you dance to a Jewish song you relive the past, old ceremonies like the Morroccan Tachdid, or the Yemenite henna are revived, religious themes are interpreted like the Brith Milah, the Wedding, the Shabat, among others, and that is how old songs are kept alive for over 5000 years.

Also dance is the only form of expression that can transmit Jewish values with more perfection because it combines, songs, movements, and traditional costumes and utensils used many years ago, making it memorable not only for the dancers that are experiencing it in a way that they will never forget, but also for audiences that get to watch it as if they were part of it.”

██████████ stated that the dance teacher “must transmit through dance and choreography, the traditions and teachings of the Jewish religions and its customs. The Israeli Dance teacher must be familiar with and experienced in Jewish values and must be able to transmit them to the dancers and the audience.” While ██████████ stated that the dance teacher must be able to “transmit” Jewish values to the dancers and to the audience, he does not indicate that the teacher does more than teach dance moves. The petitioner provided no evidence that the beneficiary actually teaches religious concepts. It appears that Israeli dance, as described by the petitioner, is more an avenue to preserve Jewish history and culture than a specific expression of religion. While we acknowledge the close relationship between Judaism as a religion and the Jewish lifestyle, it does not follow that any given activity, whatever its nature, is a religious activity if performed with the proper spiritual mindset. We must consider the specific duties of the position.

██████████ stated that Israeli dance “not only maintains the Traditions of a thousand years but also serves as a way of belonging to a community, or pertaining socially, artistically and culturally to a movement that is happening around the world.” He further stated that the dance “is a safe, cultural, artistic and physical activity that doesn’t segregate, only congregates.” Folkloric dance is described in a translated article about the beneficiary from Playbill as “a dance created by and for the people of a village. Its purpose is to manifest culture, feelings, tradition, ways of life, some theme of interest from the country and, finally values.”

The petitioner has submitted no evidence that the proffered position is defined and recognized by a governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination. On appeal, the petitioner submits documentation that no Rabbinical Counsel exists and counsel asserts that “the documentation submitted from experts and scholars in Judaism adequately establishes that the position of Jewish dance instructor is a religious occupation as it relates to a traditional religious function.” However, the documentation from the petitioner’s experts and scholars merely address the status of dance in religion and in Jewish history and culture. The petitioner has submitted no evidence from any source that establishes that the position of dance instructor is a religious occupation recognized as such by any governing body within Judaism.

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 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.” 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 September 29, 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.

As the petitioner has not established that the position is a religious occupation, it has not established that the beneficiary continuously worked in a qualifying religious occupation for two full years preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization that contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a copy of a September 20, 1991 letter from the IRS granting it tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) as an organization described in section 509(a)(2) of the IRC. Section 509(a)(2), refers to organizations that are private foundations which

- (A) normally receives more than one-third of its support in each taxable year from any combination of –
- (i) gifts, grants, contributions, or membership fees, and
 - (ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business.

Therefore, the letter from the IRS does not indicate that the petitioner's section 501(c)(3) tax-exempt status is based on the religious nature of the organization. Accordingly, the burden of proof is on the petitioner to establish that its classification derives primarily from its religious character. The petitioner can do this

pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine it is a tax-exempt religious organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for Citizenship and Immigration Services (CIS), *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to submit the documents listed above. The content of those documents must establish the religious purpose of the organization.

The petitioner submitted a copy of its articles of incorporation which provide that the “general objects and purposes of the Center shall be exclusively to receive and administer funds for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.” The petitioner identified specific purposes to include:

- (1) To promote, foster, advance and develop an appreciation and awareness of Jewish values, Jewish culture and Jewish identity.
- (2) To provide Jewish cultural and educational activities, programs and services to the community at large, and to assist in the development of Jewish values, culture and awareness.
- (3) To encourage responsible citizenship and leadership involvement in both the Jewish community and the general community through the development of social awareness and consciousness and a sense of obligation to participate in community and civic affairs.
- (4) To build, preserve and enhance Jewish culture and heritage by encouraging individuals and groups to participate in cultural and educational experiences based on Jewish experience values, and life in the United States, Israel and other countries.

The petitioner submitted a copy of a page from its website, which lists the activities and services it provides as: fitness, aquatics, sports, tennis, Maccabi games, summer camp, dance, early childhood, elementary programs, special needs, Hebraica, senior adults, and cultural arts.

Significantly missing in the petitioner’s description of its purposes and the programs and services it offers is any description of the religious purpose and nature of its activities. The petitioner did not submit a copy of a properly completed IRS Form 1023. As previously discussed, while Jewish culture and religion may share a close relationship, it does not necessarily follow that any cultural or social activity by those of the Jewish faith automatically rises to the level of religious activity.

The record does not establish that the petitioner is a bona fide nonprofit religious organization.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.