

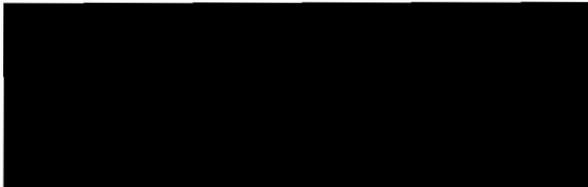
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE: WAC 07 112 52682 Office: CALIFORNIA SERVICE CENTER Date: NOV 23 2009

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:



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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the matter to the director. The director again denied the petition and certified the decision to the AAO for review. The AAO will withdraw the director's decision and approve the petition.

The petitioner is a Protestant Christian 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 instructor and religious education director. The director determined that the petitioner had not established: (1) that the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition; (2) its ability to compensate the beneficiary; (3) that the beneficiary's position qualifies as a religious occupation; or (4) that the beneficiary qualifies for the position offered.

We note that the most recent submission is from [REDACTED] at a Los Angeles address that also appears on letterhead used by [REDACTED]. The record contains no Form G-28, Notice of Entry of Appearance as Attorney or Representative, naming [REDACTED] as the attorney of record. The record also contains no correspondence indicating that [REDACTED] has ceased to represent the petitioner. Therefore, we shall refer to [REDACTED] as "counsel's associate" rather than "counsel."

In response to the certified decision, counsel's associate argues that the record does not support the director's decision.

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 September 30, 2012, 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 September 30, 2012, 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 petitioner filed the petition on March 12, 2007. The director issued a request for evidence on June 5, 2007; the record contains the petitioner's timely response to that notice. The director denied the petition on November 20, 2007, and the petitioner appealed the decision on December 19, 2007. On November 26, 2008, U.S. Citizenship and Immigration Services (USCIS) published new regulations that replaced the earlier regulations at 8 C.F.R. § 204.5(m). On December 16, 2008, the AAO remanded the petition for a new decision under the revised regulations. On February 4, 2009, the director issued a notice of intent to deny the petition, advising the petitioner of some (but not all) of the new regulations. The director issued the second, certified denial on May 28, 2009. The body of the certified denial consists, basically, of the language from the February 2009 notice of intent to deny, followed by the language from the November 2007 denial notice. Consequently, in the new decision, the director cited several obsolete passages from the old regulations.

#### TWO YEARS EXPERIENCE

The first issue we will consider concerns the beneficiary's past experience. 8 C.F.R. § 204.5(m)(4) requires the beneficiary to have been performing qualifying religious work continuously for at least the two-year period immediately preceding the filing date of the petition. The prior religious work need not correspond precisely to the type of work to be performed. 8 C.F.R. § 204.5(m)(11) reads, in part:

*Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

(i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.

The petitioner must establish the beneficiary's continuous qualifying employment during the two years immediately preceding the petition's March 12, 2007 filing date.

The petitioner has submitted copies of IRS Forms W-2, showing that the petitioner paid the beneficiary \$20,000 in 2005 and \$24,000 in both 2006 and 2007. Copies of processed paychecks show the beneficiary's receipt of monthly net pay (minus withholding) from March 2005 onward.

IRS transcripts of the beneficiary's 2005 and 2006 income tax returns agree with the sums on the Forms W-2.

The director, in denying the petition on May 28, 2009, did not mention the above payroll evidence. Rather, the director found that the petitioner failed to submit a "detailed description of the beneficiary's duties," and concluded that "the petitioner has failed to establish that the beneficiary has been working continuously in the same type of work as the proffered position for the two-year period immediately preceding the filing of the petition." The quoted passages are among those copied from the earlier 2007 decision.

The assertion that the petitioner had not shown that the beneficiary had performed "the same type of work as the proffered position" fails to take into account the new regulation at 8 C.F.R. § 204.5(m)(4), which specifies that the prior religious work need not correspond precisely to the type of work to be performed. Under the new regulations, some difference between past work and intended future work (so long as past and future duties are both qualifying religious duties) is not a basis for denial. (Elsewhere in this decision, we will address the director's findings about the nature of the beneficiary's duties.)

We withdraw the director's finding that the petitioner has not adequately documented the beneficiary's prior employment.

#### ABILITY TO PAY

The next basis for denial under discussion is the director's finding (in both the 2007 and 2009 versions of the decision) that the petitioner had not established its ability to pay the beneficiary the proffered salary.

8 C.F.R. § 204.5(m)(10) reads, in part:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. . . . This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided.

In the initial filing, the petitioner stated that the beneficiary would earn \$1,800 per month, which equals \$21,600 per year. The record (including checks and IRS Forms W-2 mentioned previously) shows that, from 2006 onward, the petitioner has paid the beneficiary more than the proffered rate, and that the petitioner's income is more than sufficient to cover the beneficiary's salary on a continuing basis.

In denying the petition in 2009, the director did not explain why the petitioner's evidence did not meet the above regulatory requirements. The director simply repeated the original 2007 findings, without discussion of supplemental materials the petitioner submitted in 2009. The director noted that financial documents showed negative net income for the petitioner in May and June of 2007, but (as an associate of counsel notes in response to the certified decision) the record also shows that the petitioner was able to compensate the beneficiary in those months, and that the petitioner's income in other months covered the shortfall in May and June 2007. The record does not show a consistent pattern of significant financial loss by the petitioner, and the petitioner's consistent history of paying the beneficiary her full salary indicates the petitioner's basic financial soundness. We hereby withdraw the director's finding that the petitioner has not shown that the petitioner is able to pay the beneficiary at the offered rate.

## RELIGIOUS OCCUPATION

The next issue under discussion is whether the beneficiary's intended work for the petitioner qualifies as a religious occupation. The regulation at 8 C.F.R. § 204.5(m)(5) includes the following definition:

*Religious occupation* means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

A job description submitted with the initial filing reads:

As a Religious Instructor and Religious Education Director, [the beneficiary] directs and coordinates activities of a denominational group to meet religious needs of students. Plan, direct, or coordinate church youth school programs designed to

promote religious education among church membership. May provide counseling and guidance relative to martial [*sic*], health, financial, and religious problems.

██████████ stated:

[The beneficiary's] major responsibilities are to advocate for the church members, the empowerment of church members, the active participation and the leadership of church members in our church community. She will work with, and support volunteers in the religious education program. Also she will organize church event activity and create education[al] material both for youth students and teachers.

An "Average Breakdown of Weekly Work Schedule" includes such responsibilities as "Managing Sunday School Staff Meeting," "Disciple Training," "Managing Junior Advice Center Service," and "Call Leader Bible Study."

The June 2007 request for evidence included the following instructions:

Provide the following evidence to establish that the proffered position is recognized as a religious occupation related to a traditional function in this religious denomination or organization: constitution; by-laws; and a letter from a Superior or Principal of the religious denomination or organization in the United States explaining how the position offered qualifies as a traditional religious function.

In response, the petitioner's senior pastor, ██████████, stated: "Missionar[ies] must teach people about Jesus Christ. People will not know HIM [if] nobody teaches them. Faith comes as result of knowledge. . . . Therefore, the position of Religious Education Director and Instructor is related to [a] traditional religious function."

The petitioner submitted a copy of its bylaws, Article 4.04 of which stated: "Religious education directors can be hired to teach the children that attend the church."

The director, in denying the petition in 2007, cited the then-current version of 8 C.F.R. § 204.5(m)(2), which stated, in part: "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." Although the list of qualifying religious occupations specifically included "religious instructors," the director found that the petitioner had failed to establish the religious significance of the beneficiary's position.

In the 2009 notice of intent to deny the petition, intended to advise the petitioner of new regulatory requirements, the director did not address the question of whether or not the beneficiary's position is a religious occupation. In the subsequent certified denial notice, the director repeated the language from the earlier 2007 decision. The director again quoted the (now obsolete) regulation at 8 C.F.R.

§ 204.5(m)(2), which listed religious instructors among qualifying religious occupations. The director found the petitioner's description of the beneficiary's duties to be "general and unsubstantiated."

In response to the certified decision, an associate of counsel asserts that the petitioner acted in "good faith belief of the level of detail required by the Service." While the description of the beneficiary's duties is somewhat vague and general, in that it lacks precise hour-by-hour descriptions of the beneficiary's activities, the director did not explain why the information provided is not sufficient to establish eligibility. The record indicates that the beneficiary is responsible for Bible study, after school activities, summer Bible school, and other activities that reasonably fall under the umbrella of religious education. There is no reason to believe that the beneficiary is an administrative or otherwise secular employee whom the petitioner has labeled a "religious instructor" simply to qualify her for immigration benefits as a religious worker. Likewise, the record does not suggest that the beneficiary's position is normally a volunteer or part-time position that the petitioner has falsely put forth as a paid, full-time position in order to secure immigration benefits for the beneficiary. We withdraw the director's finding, and we find that the beneficiary's position qualifies as a religious occupation.

## QUALIFICATIONS

The final issue under consideration is the director's finding that the petitioner failed to establish that beneficiary is qualified for the position she seeks. The former 8 C.F.R. § 204.5(m)(3)(ii)(D) required the prospective employer to attest that the beneficiary "is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that . . . the type of work to be done relates to a traditional religious function."

stated that the beneficiary's "prior work experience and education background qualifies her" to perform the duties of the petition. The petitioner submitted certificates showing that the beneficiary took a number of courses at WOOREE Church in Korea, where she worked as Bible instructor and director of the Religious Education Department from 1994 to 2003. (All references to the church in the record are capitalized in this way.)

We note that, in response to the June 2007 request for evidence, the petitioner stated that its by-laws "describe[] requirements of beneficiary's job title." The by-laws provide for the hiring of a religious education director, but do not discuss or describe the requirements for that position. The director, in the 2007 denial notice, noted that the by-laws did not describe the job requirements as the petitioner had claimed.

8 C.F.R. § 204.5(m)(7)(ix) requires an official of the employing organization to attest that the alien is qualified for the position offered. The petitioner provided the required attestation in response to the February 2009 notice of intent to deny the petition.

In the 2009 denial notice, the director repeated the observation that the by-laws did not explain the qualifications for the beneficiary's position. In response, an associate of counsel states "the defect in the Petitioner's bylaws has absolutely no bearing on the Beneficiary's actual qualification" for the position.

We find that the petitioner complied with the requirements in both the old and new regulations with regard to attesting to the beneficiary's qualifications. The petitioner submitted documentation of the beneficiary's prior training and experience, and there is no apparent reason to believe that the petitioner has understated the real requirements of the position or that the beneficiary is unqualified for that position. The beneficiary holds a degree in education, and she took several religious and leadership courses at her former church in Korea. The director has not disputed the authenticity of the beneficiary's credentials, and it appears from the record that the beneficiary's background is more than adequate to prepare and qualify her for the position she seeks. Therefore, we withdraw the director's finding that the petitioner has not established the beneficiary's qualification for the job.

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. We have withdrawn each stated basis for denial, and review of the record does not reveal any other readily apparent ground for denial. Accordingly, we will withdraw the decision of the director and approve the petition.

**ORDER:** The director's decision of May 28, 2009 is withdrawn. The petition is approved.