

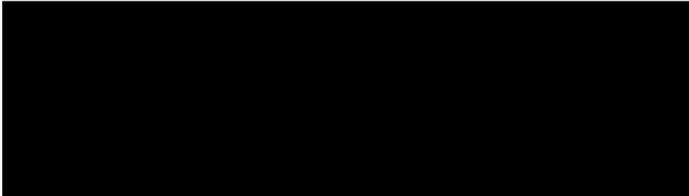
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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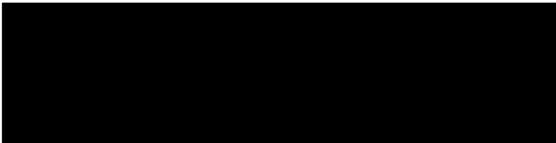
IN RE: Petitioner:
Beneficiary:



APR 06 2010

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew

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 instructor. The director determined that the petitioner had not established that the beneficiary will be coming to the United States to work in a full time compensated position.

The petitioner submits a letter 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 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 issue presented on appeal is whether the petitioner has established that the beneficiary will be coming to the United States to work in a full time compensated position.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m) provides, in pertinent part:

To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must:

- (2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section.

In its February 4, 2009 letter in support of the petition, the petitioner, through its pastor [REDACTED], stated that the total hours that the beneficiary has worked and will work in the proffered position totaled 35 to 40 hours per week. The petitioner outlined the duties of the position as:

- (1) according to the religious tradition and principles of Christian Church, planning and teaching at Sunday-School program and other religious programs for parish members (15 hours per week);
- (2) planning, preparing, and running bible study groups at the parish for adults, college groups, high-school groups (10 hours per week);
- (3) planning, preparing, and running bible study groups and providing religious counseling at individual church members' homes (10 hours per week);
- (4) planning, organizing, and teaching at special religious programs for youth members such as summer/winter vacation and revival meetings (average 5 hours per week).

During a compliance verification review conducted on February 25, 2009, the immigration officer noted that the petitioner's congregation consisted of approximately 80 adults and 30 children, and employed three full-time and one volunteer teachers. The investigating officer also reported that the full-time employees, including the beneficiary of this petition, "typically work from home." The investigating officer reported that the pastor advised that the beneficiary worked from home Monday through Friday and "on occasion works at the Church from 10:00 AM to 12:00 PM, weekdays."

In denying the petition, the director questioned how the beneficiary could provide religious instruction to students during the two hours per day that he was at the church, particularly to students who were attending secondary schools. On appeal, counsel asserts that there was a language barrier and a misunderstanding between the investigator and [REDACTED] and that [REDACTED] understood the investigator to ask, "When does the beneficiary run bible classes at the church during the week?"

In a May 19, 2009 letter submitted on appeal, [REDACTED] stated that the beneficiary teaches Sunday school for the youth group from 7 to 12 and teaches adults and regional groups during the week. On appeal, the petitioner submits a weekly schedule for a religious teacher:

MONDAY

Break

TUESDAY

6:30am	Morning Prayer
9:00am	Daily Service for Church Staffs
10:00 am	Planning Committee (Weekly/Monthly Planning and Reporting)
1:00 pm – 5:00pm	Evangelization Meeting (Regional/Neighbor/Parishioner's Home)

WEDNESDAY

6:00am	Morning Prayer
9:00am	Daily Service for Church Staffs
10:30am-12:00[p]m	Run Bible Study Group
1:00pm – 5:00pm	Visiting Absentees/Spiritual Letter Writing to Members

THURSDAY

6:00am	Morning Prayer
9:00am	Church Staff Meeting
10:30 – 12:00[p]m	Run Bible Study Group
1:00pm -3:00pm	Leading Regional Meeting

FRIDAY

6:00am	Morning Prayer
9:00am	Daily Service for Church Staffs
9:30am -12:00[p]m	Visiting the Sick/ Absentees/ Families with Problems for Spiritual Education & Counseling
3:00pm -5:00pm	Spiritual Education for Choir Group
7:00pm-9:30pm	Friday Prayer Meeting

SATURDAY

6:00am	Morning Prayer
9:00am	Daily Service for Church Staffs
9:30 -10:00am	Preparation for Sunday Services
1:00pm -3:00pm	Preparation for Sunday Bible Study Groups
3:00pm – 5:00pm	Meeting and Training for Sunday School Teachers

SUNDAY

6:00 am	Morning Prayer
11:00 am	Sunday Service
12:30 [p]m	Sunday School
3:00pm	Education Program for New Members

3:00 -5:00pm

Fellowship & Promoting Members' Participation

The duties as outlined in the weekly schedule provided on appeal vary substantially from that provided by ██████████ in his letter provided with the petitioner's initial submission. In that letter, ██████████ stated that the beneficiary spends 15 hours per week planning and preparing for teaching Sunday school and other religious programs. The above schedule provides for, at most, 8.5 hours per week, including the hours for spiritual education for the choir group, preparation for Sunday bible study groups, meeting and training for Sunday school teachers, and Sunday school. The petitioner also stated in its initial submission that the beneficiary spends 10 hours per week "planning, preparing, and running bible study groups" for adults, college groups, and high school groups in the parish, and an additional 10 hours per week plus religious counseling at church members' homes. However, the above schedule provides for only about 14 hours, including evangelization meetings, visiting absentees and "spiritual letter writing, visiting the sick and those in need of spiritual education and counseling, and Sunday fellowship and education program for new members. The new daily schedule thus provides for, at most, 22.5 hours of instruction and preparation time. We note that, according to the weekly schedule, additional meetings account for approximately 6 additional hours. However, these meetings were not noted in the petitioner's initial submission.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The daily schedule provided by the petitioner on appeal includes morning prayer, daily service for church staff, preparation for Sunday service and Sunday service. The petitioner has not established that morning prayer and church service for the staff are part of the beneficiary's duties as a religious instructor. Further, the petitioner provided no documentation to establish that the beneficiary was involved in Sunday service; therefore, it has failed to establish that his preparation for Sunday service and his attendance are in any way connected to his work as a religious instructor.

The evidence therefore does not establish that the beneficiary will be engaged in work as a religious instructor on a full time (at least 35 hours per week) basis. Additionally, on appeal, counsel contests the investigating officer's statement that the petitioner employs three full-time teachers instead of the two on the petitioner's staff. We note, however, that the petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that it employed a religious education director and a religious teacher in addition to the position offered to the beneficiary. As noted by the investigating officer, the petitioner's congregation of 80 adults and 30 children do not appear large

enough to support the work of a two- or three-person education department. The petitioner has not shown how the work of these religious instructors, which appear to overlap, are allocated such that each works a full 35-hour per week schedule.

The petitioner has failed to establish that the beneficiary will be coming to the United States to work in a full time (at least 35 hours per week) compensated position.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.