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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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APR 28 2010

FILE: WAC 09 006 51486 Office: CALIFORNIA SERVICE CENTER Date:

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.

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 Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Christian church claiming “over 7,000 members” and “over 12,000 affiliated churches throughout the world.” 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 lead pastor [REDACTED], the petitioner’s Spanish-language ministry. The director determined that the petitioner had not established that the proffered position qualifies as a religious occupation, or that the beneficiary is qualified for the position.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted materials.

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).

We will first examine the nature of the position offered to the beneficiary. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines “religious occupation” as 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.

The petitioner filed the petition on October 8, 2008. In a letter dated September 4, 2008, [REDACTED] the petitioner's staffing manager, stated:

[The petitioner] has offered [the beneficiary] the permanent position of [REDACTED] [REDACTED] for our main campus in South Barrington, Illinois due to our rapid growth and current needs. . . .

[REDACTED] is] the Spanish language ministry of [the petitioning entity]. . . .

The key job responsibilities for this position include (1) leading [REDACTED] (2) recruiting, leading and supervising volunteer ministry staff; (3) developing ministry strategy and integrating it within the larger Church body; and (4) leading [REDACTED] weekend services. We have attached a detailed job description for your reference.

The detailed description, apparently an internal document of the petitioner's human resources department, includes the following information:

The purpose of this position is to lead, develop leaders, and serve as the main teaching pastor of [REDACTED] a seeker-targeted Spanish ministry of [the petitioning] Church. He will lead efforts to build a thriving Latino community within the life of the church, and represent the Hispanic community among church leadership.

Key Responsibilities:

Responsibilities	% of Time
Weekend Teaching/preparation	30%
Leadership/ministry strategy	25%
Leadership development (recruit, lead & supervise volunteer staff)	25%
Weekend service leadership, programming input, leading worship	15%
Administrative	5%

The petitioner submitted a copy the April 9, 2006 issue of *Reflejos*, a bilingual newspaper described on its masthead as “The Voice for Suburban Latinos.” The cover article, “Spanish services,” in that newspaper described the growth of Spanish-language ministries in “the suburbs of Chicago.” The article includes the beneficiary’s name and photograph, and identifies him as the “full-time pastor” of [REDACTED]

We note that, despite repeated descriptions of the beneficiary as a “pastor,” the petitioner has not claimed that the beneficiary qualifies for classification as a minister.

On January 29, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit additional information about the beneficiary’s position and to show that the beneficiary’s “duties primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination.”

In response, [REDACTED] repeated the four “key job responsibilities” listed in his earlier letter (quoted earlier in this decision), and added: “The pastoring duties for this position include: (1) officiating wedding ceremonies; (2) officiating funerals; (3) hospital visitations; (4) performing baptisms; (5) pastoral counseling; (6) teaching/praying; (7) leading worship; and (8) community relations.”

The petitioner also resubmitted the job description, with the percentage figures replaced by hours per week (with two hours representing 5% of the original schedule).

The petitioner submitted a copy of a second article from *Reflejos*, but unlike the earlier article, the petitioner submitted this article only in Spanish with no translation (except for a photograph caption that did not mention the beneficiary) as required by the USCIS regulation at 8 C.F.R. § 103.2(b)(3). The petitioner also submitted a printout of a January 28, 2006 article from the *Daily Herald*, “Willow Creek adds to Spanish ministry,” which indicated that the beneficiary will be “[t]he man doing the speaking most of the time” in [REDACTED]

The director denied the petition on March 17, 2009, partly because the petitioner “failed to demonstrate that the [beneficiary’s] occupation qualifies as a religious occupation under the denomination.” The director concluded: “The position offered is considered a wholly secular administrative function.” The director acknowledged that the beneficiary’s listed duties included weddings, preaching, and other religious functions, but concluded that the beneficiary’s “primary duties would be administrative.”

On appeal, counsel argues that the director failed to identify any specific secular duties performed by the beneficiary, much less establish that the beneficiary’s work is “wholly secular.” We agree with counsel on this point. The petitioner had indicated that the beneficiary would devote two hours of each 40-hour work week to “administrative” functions. References to “preparation” and “strategy” do not warrant the conclusion that the beneficiary’s entire or primary function is to provide logistical or administrative support to an organization that simply happens to be religious. The petitioner has

asserted that the beneficiary leads worship services and officiates at religious observances, an assertion supported by newspaper articles published long before the petitioner filed the petition.

In reviewing the job description and other evidence in the record, we find that the director has overemphasized the beneficiary's administrative functions at the expense of his demonstrably religious duties. We withdraw the director's finding that the petitioner has not shown that the beneficiary's work relates to a traditional religious function. Despite this reversal, however, we cannot approve the petition because a second ground for denial remains.

The USCIS regulation at 8 C.F.R. § 204.5(m)(7)(ix) requires the petitioner to attest that the beneficiary is qualified for the position offered. The regulation at 8 C.F.R. § 204.5(m)(12) further specifies that USCIS may verify the petitioner's supporting evidence through any means USCIS deems appropriate. Looking at these two regulations together, it is clear that, while the petitioner is required to attest to certain facts, USCIS is not required to accept those attestations uncritically or without question.

In his letter submitted with the initial filing, [REDACTED] stated:

[T]he individual selected for this position must have a strong walk with God and commitment to the local church, must maintain a whole life commitment to the Church's mission, vision and values, and must have a passion for evangelism, and shepherding and developing people. Specifically, the individual selected for this position must have experience in leading the Hispanic community toward a Christian life. . . .

Not only has [the beneficiary] been successfully working in this position for three years, but his experience before that amply qualified him for the position as well. . . . In 1996, he and his wife founded [REDACTED] in Mexico City where he also had been the Senior Pastor since that time. . . . [The beneficiary] also incorporated his talent as a musician to preach the word of God throughout Latin America, and has even performed on television for the Christian Broadcasting Network. . . .

Based on our extensive review of his credentials, personal meetings with him, and his performance in the position to date, we would like to continue to employ him. . . . [O]ur Board of Elders ha[s] determined [REDACTED] to be amply qualified for this position on a permanent basis.

The detailed job description accompanying the initial filing included the following information:

Position Requirements

	Necessary for Position	Desired for Position
Skills/Knowledge:	Teaching ability Leadership experience	Ability to lead worship

Fluent Spanish & English
Familiar with [the petitioner's] ministry model

Experience: Teaching/Preaching (Spanish)
Ministry experience in multi-cultural setting

Education: Minimum B.A. in related field M.Div. or M.A. in related field

Spiritual Gifts: Teaching
Leadership
Evangelism

The petitioner submitted photocopied documents that may relate to the beneficiary's credentials, but the documents are in the Spanish language with no certified translation provided as required by the USCIS regulation at 8 C.F.R. § 103.2(b)(3). The petitioner also submitted a copy of the beneficiary's résumé.

In the RFE, the director instructed the petitioner to "[l]ist 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, the petitioner submitted a second version of the job description, showing the same job requirements listed in the first version. The petitioner also submitted additional copies, still untranslated, of Spanish-language documents submitted previously.

In denying the petition, the director found that "the petitioner has not established that the beneficiary is qualified for the position." On appeal, counsel correctly states that the petitioner twice submitted a job description including "the minimum education, training and experience required." This does not, however, show that the petitioner complied with the director's request for evidence to show that the beneficiary met those requirements.

Counsel states that the petitioner submitted the beneficiary's résumé, but this document is simply a list of claims rather than evidence to support those claims. Counsel also asserts that the petitioner had submitted "informational materials on Beneficiary's qualifications," but does not identify those materials. This assertion, therefore, suffers the same flaw as the director's categorical and unexplained finding that the beneficiary's duties are "secular" and "administrative," with no further explanation.

Counsel states:

The U.S. District Court for . . . Northern Illinois, under whose jurisdiction this case arises, previously ruled that legacy INS's imposition of a training requirement not contained in the Act or regulations amounted to substantive rulemaking, prohibited by the Administrative Procedures Act. *Perez v. Ashcroft*, 236 F. Supp.2d 899 (N.D. Illinois 2002).

The cited case concerned the denial of a petition on the grounds that a given position could not qualify as a religious occupation unless that position required specialized training. As such, the *Perez* case does not closely parallel the present proceeding. Here, the “imposition of a training requirement” came not from the director, but from the petitioner, which stated that the beneficiary’s intended position requires teaching and preaching experience in Spanish, “ministry experience in [a] multicultural setting,” and at least a bachelor’s degree in a field related to the position. Because the petitioner voluntarily made these claims, the petitioner cannot now object to the director’s efforts to confirm that the beneficiary possesses these qualifications.

Counsel asserts that, by regulation, the petitioner is required only to show that the beneficiary possesses at least two years of continuous experience immediately preceding the petition’s filing date, and that the petitioner has met that requirement. This is a *non sequitur*, because the issue is not whether the beneficiary performed qualifying work for two years, as required by 8 C.F.R. § 204.5(m)(4). Rather, the issue is whether the petitioner has shown that the beneficiary meets the qualifications that the petitioner itself claims to require for the job. The regulation at 8 C.F.R. § 204.5(m)(12) permits the director to take necessary steps to verify the petitioner’s claims. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

In this instance, the petitioner has repeatedly stated that the position requires a “minimum B.A. in [a] related field.” The petitioner has not submitted any evidence that the beneficiary holds this degree. When the director noted this omission, counsel has responded by arguing, in effect, that the petitioner should not have to prove that the beneficiary holds the degree.

While the beneficiary’s résumé is not, by itself, sufficient evidence of the beneficiary’s qualifications, we note that the only degrees that the beneficiary claims on his résumé are a “Bachelor and Masters of Music (Composición)” from the National Conservatory of Music, Mexico City. The petitioner has not explained how it considers degrees in music composition from an apparently secular institution to be “related” to the beneficiary’s present position (which, as described, includes no musical duties).

The petitioner claims to require prior experience, but the record contains no documentation of the beneficiary’s experience before he began working for the petitioner. Counsel observes that the beneficiary has worked for the petitioner since 2005, and thereby gained experience in the job. This does not explain, however, how the beneficiary was already qualified for the job when the petitioner hired him in 2005. The petitioner has claimed that the beneficiary ran a church in Mexico prior to his work for the petitioner, but the record contains no acceptable documentation to support that claim.

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 met that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.