

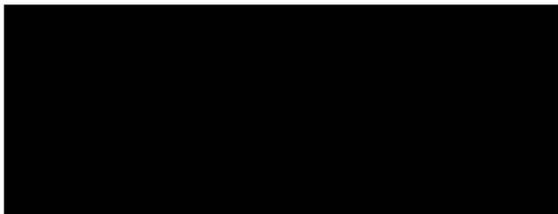
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
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Services**

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FEB 01 2010

FILE: WAC 08 243 50340 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.


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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a school. 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 headmaster. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel asserts that the position of headmaster, while carrying some secular duties, is primarily of a religious nature. Counsel submits a brief 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 proffered position qualifies as that of a religious occupation. 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.

In an undated statement submitted in response to the director's request for evidence (RFE), the petitioner stated that the headmaster "oversees and helps develop the Academic and religious curriculum of the school." The petitioner also provided a job description for the headmaster, which contains the following information:

This position is responsible for spiritual and character formation, instructional leadership, scheduling, the program of studies, and data analysis. The Headmaster/School Principal embraces the concept and methodology of Christian and Classical Education and infuses this in the daily practices of the classroom as well as school life . . .

The Headmaster/School Principal is the equivalent of a CEO (Chief Executive Officer) appointed by the Board of Trustees to administrate the implementation of the school's mission and operating policy. He is an educational director who provides day-to-day educational and religious leadership for the school. The Headmaster/School Principal carries out the school's broad educational mission and policies relating to Faith and Academics as established by the Board of Trustees and its school community.

Among the specific responsibilities outlined in the job description are the following:

- Works within an Orthodox Christian framework, developing the Academy around the ancient traditional base.
- Plans focus on a faith based, integrated curriculum
- Remains abreast of trends and research in Christian classical education
- Provides leadership, assistance and support to staff in their efforts to develop classical Christian curricula.

- Designs, implements and administers student programs and school services, appropriate to the needs of those enrolled and consistent with the values and teaching styles of a Christian & Classical SJDA approach.

The position also requires “Extensive knowledge of and experience in Orthodox Christianity.”

In denying the petition, the director determined that the duties of headmaster “illustrate a more administrative nature rather than a Religious occupation.” On appeal, counsel asserts that the director’s “determination arises from the application of an erroneous legal standard as well as a misunderstanding of the nature of the position.” In an April 30, 2009 letter, the petitioner stated:

The headmaster must have the requisite religious background and education to be able to uphold the tenets of the Orthodox faith when carrying out all of his duties and to ensure that all facets of the educational experience further the religious mission of the school. Therefore, it is required that the headmaster be a member in good standing of the Orthodox faith.

The petitioner further stated that “the religious component of the position is of such importance that” prior headmasters included a priest and a subdeacon of the church. The petitioner submitted a February 13, 2009 letter from the [REDACTED] Bishop of Los Angeles and the West, who stated that he has blessed the beneficiary’s work and that the beneficiary “worked with the staff to integrate the Orthodox Faith with the academic curriculum” and that he is encouraged by the beneficiary’s “work to give the children a solid academic and spiritual foundation.”

We find that the record sufficiently establishes that the position of headmaster with the petitioning organization is a religious occupation. The record sufficiently establishes that the position is primarily religious in nature and relates to a traditional religious function, i.e., teaching and indoctrinating students in their religious faith. The headmaster is responsible for the overall religious tenor and climate of the school, and he or she is no less responsible for instilling Christian values in the student body than the faculty member who teaches directly from the bible.

Nonetheless, the petition cannot be approved as the record now stands.

The petitioner has failed to establish that the beneficiary has worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition. The regulation at 8 C.F.R. § 204.5(m)(11) provides:

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.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on September 11, 2008. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The petitioner provided documentation indicating that the beneficiary had served as the Executive Director of St. Nicholas Ranch and Retreat Center, under the auspices of the Greek Orthodox Metropolis of San Francisco, and Secretary of the Orthodox Church in America in Syosset, New York. The petitioner provided copies of the beneficiary's IRS Forms W-2 for 2006 and 2007 issued to the beneficiary by the Greek Orthodox Archdiocese in San Francisco, and a copy of a 2007 IRS Form 1099-MISC, Miscellaneous Income, issued to the beneficiary by the Orthodox Church in America. However, the petitioner submitted no similar documentation, as required by the regulation at 8 C.F.R. § 204.5(m)(11), to corroborate the beneficiary's work in 2008.

Further, the regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. 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. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

In its June 1, 2008 contract with the beneficiary, the petitioner stated that the beneficiary would begin work on August 1, 2008 and would receive a base salary of \$75,000 per year. In response to the director's RFE, the petitioner stated that the beneficiary is compensated at the rate of \$80,000 per year. The petitioner, however, provided no documentation that it has paid the beneficiary in the past and none of the documentation specified in the above-cited regulation.

This matter will be remanded for the director to address these issues. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.