

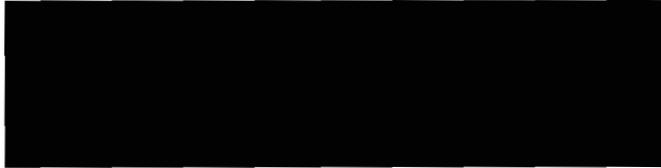
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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Services

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FILE: WAC 09 054 50087 Office: CALIFORNIA SERVICE CENTER Date: FEB 23 2010

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

SELF-REPRESENTED

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
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 sacristan.¹ The director determined that the petitioner had not established that the position qualifies as that of a religious occupation, that the beneficiary has been working continuously in a qualified religious occupation or vocation, that the petitioner has the ability to pay the beneficiary, and that the petitioner is a bona fide nonprofit religious organization.

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 first 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

¹ The petitioner initially described the proffered position as a sexton and caretaker.

(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 its undated letter submitted in support of the petition, the petitioner stated that the beneficiary “has performed on a volunteer basis the many duties required of the sexton and caretaker of the church sacristy.” In a request for evidence (RFE) dated February 17, 2009, the director instructed the petitioner to:

Provide a **detailed description** of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

In a March 27, 2009 letter responding to the RFE, the petitioner repeated the statement that the beneficiary has performed “the many duties required of” the position, although now referring to the position as sacristan and caretaker. The petitioner did not further expand on the duties performed by the sacristan. The petitioner did, however, include in its list of parish jobs that of a maintenance worker, whose job description indicates that he or she is responsible, under the supervision of the plant manager, “for the operation, maintenance, repair, safety, and security of the entire parish campus and other parish properties.” The petitioner provided no similar job description for a sacristan.

On appeal, the petitioner states:

The position of Sacristan is a primarily religious function, a religious occupation of the Roman Catholic denomination. It is a liturgical function since it supports

the celebration of the Eucharistic Liturgy, which is the center and summit of the Roman Catholic Faith. The Sacristan is responsible for the proper preparation of the church facility, the sacred vessels, the sacred vestments, and those things required for the celebration of the Eucharistic Liturgy prior to each Mass. The same dedication and attention is required following the Mass. The Sacristan, in a position of management and oversight, ensures the smooth operation of the Sacristy. In this regard, the Sacristan is primarily a religious occupation, helping to promote the religious creed and beliefs of the Catholic Church.

The celebration of the Sacred Liturgy is expected to take place in a sacred space and should be well-maintained, clean and orderly. The Sacristan is responsible therefore for the cleanliness and orderliness of the Church.

In addition, the Sacristan helps train the Altar Servers and supervises their ministry at liturgical celebrations. The Sacristan also assists other liturgical ministers including readers, ushers, and greeters at our parish Liturgies. In this regard, the Sacristan also advances the Catholic creed. Specifically, [the beneficiary] was commissioned as a Catechist to teach the faith to our members.

The petitioner on appeal also provides a job description for a sacristan with a detailed description of the duties. The petitioner provides no documentation from its governing authorities to indicate that the position is recognized as a religious occupation within the denomination.

Additionally, the petitioner appears to have expanded and changed the duties of the proffered position. The petitioner initially claimed that the beneficiary performed the duties of sexton and caretaker. On appeal, the petitioner asserts that as sacristan, the beneficiary takes care of the facility and all vestments and vessels required for liturgy, that he trains the altar servers and supervises them during liturgy, and that he assists readers, ushers and greeters, as well as now being a catechist. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner has not established that the position of sacristan is a religious occupation within the meaning of the regulation.

The second issue on appeal is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary had been working 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 December 18, 2008. Accordingly, the petitioner must establish that the beneficiary had been continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

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 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.

In its letter submitted in support of the petition and in response to the RFE, the petitioner stated that the beneficiary had performed the duties of the position on a volunteer basis. The petitioner did not state when the beneficiary began volunteering; however, the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, indicates that the beneficiary arrived in the United States on July 31, 2007 as a visitor and that his nonimmigrant status expired on January 30, 2008.

In a separate document, the petitioner stated that the beneficiary had worked in various positions with the Saint Joseph Cathedral Parish in Bamenda, Cameroon from January 2005 to 2007, including as secretary to a Christian community council, chair of a social welfare commission, editor of a Sunday newsletter, publicity secretary, and promoter/editor of the Association of the Sacred Heart of Jesus and the Immaculate Heart of Mary. The petitioner submitted no documentary evidence to establish any of the claimed employment by the beneficiary in Cameroon. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Additionally, the record reflects that the beneficiary was not in a lawful immigration status during the period that he worked for the petitioning organization. Accordingly, any work performed by the beneficiary in the United States interrupts the continuity of his work experience for the purpose of this visa petition.²

The petitioner has failed to establish that the beneficiary worked continuously in a qualified religious occupation or vocation for two full years prior to the filing of the visa petition.

The third issue on appeal is whether the petitioner established that it intends to compensate the beneficiary.

Although the petitioner indicated that it intended to hire the beneficiary once he was authorized to work in the United States, the petitioner did not indicate the proposed terms of the employment. In her RFE, the director instructed the petitioner to "Submit evidence of how the petitioner intends to compensate the alien." The petitioner did not respond to this issue in response to the RFE.

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

² Even if the beneficiary was in a lawful immigration status, volunteer work is not qualifying work experience and his prior jobs appear to be wholly unrelated to the proffered position.

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.

On appeal, the petitioner states that it will provide the beneficiary with a salary of \$10.00 per hour and that he would be expected to work “approximately 35 hours per week.” The petitioner also provided a copy of a “combined financial summary for the year ending June 30, 2008” and a year-to-date financial summary for the period ending March 31, 2009. The petitioner submitted none of the documentation required by the above cited regulation.

Accordingly, the petitioner has failed to establish how it intends to compensate the beneficiary.

The final issue on appeal is whether the petitioner has established it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the IRC of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under

section 501(c)(3) of the Internal Revenue Code [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner submitted no documentation to establish its tax-exempt status with the petition or in response to the RFE. On appeal, the petitioner provided a copy of a sales and use tax certificate exemption from the Commonwealth of Pennsylvania. A state sales tax exemption is not evidence of tax-exempt status under section 501(c)(3) of the IRC. The petitioner failed to submit evidence of its tax-exempt status under section 501(c)(3) of the IRC or evidence that it is covered under a group exemption granted to a parent organization.

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.