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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED]
WAC 08 143 51533

Office: CALIFORNIA SERVICE CENTER Date: JAN 05 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:



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 matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further consideration and action pursuant to new regulations.

The petitioner is a Christian ministry. 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 translator. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits documentation of the beneficiary's religious training, and counsel states that the petitioner had already supplied much of this information.

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 April 21, 2008. At the time of filing, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(2) included the following definition:

Religious occupation means an activity which relates to a traditional religious function. 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. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

In a statement accompanying the petition, [REDACTED] of the petitioning organization, stated:

[The petitioner] is a religious organization formed primarily to advance the fundamentalist Christian faith and to promote the enlightenment and revelation regarding the Bible as interpreted by the teachings of [REDACTED] and [REDACTED].

If granted her permanent resident status, [the beneficiary] will continue her present Religious Translator duties, including translating from Chinese into English and editing the text of the ministry messages published in "The Collected Works of [REDACTED]." This is a massive, multi-volume publication endeavor [the petitioner] is presently engaged in. . . . This collection will contain the authoritative editions of all the writings of [REDACTED], the founder of [the petitioning organization]. . . . We expect the collection to consist of over 150 hard-bound volumes, of approximately 500 pages each. [REDACTED] conducted his prolific ministry in both English and Chinese, and hence, there is a great need for competent Chinese translators who fully understand [REDACTED] teachings. In addition, [the beneficiary] will liaise with our affiliate publishing house in Taiwan to coordinate the ongoing translation endeavor for the collection. . . .

[The beneficiary's] position is in our English editorial section which is responsible for translating from Chinese into English and presently has about 15 employees of which two are translators from Chinese into English. [The petitioner] has about 15 translators altogether, in various languages. . . .

[The petitioner] requires the following qualifications for the position:

- * Native, university-level proficiency in Chinese and excellent English-language literacy.
- * Experience in the translation of [the petitioner's] materials.
- * Completion of a [the petitioner]-affiliated, typically two-year, Bible Training program, to learn the religious creed of the Local Churches, normally first requiring a Bachelor's degree.

- * Spiritual commitment to the Christian faith as experienced in the teachings and writings of [REDACTED] and [REDACTED] demonstrated by active membership in the local churches for at least two years.

As the books and other materials published by [the petitioner] are wholly based on the Bible and, furthermore, on the writings of [REDACTED] and [REDACTED] our translators must be highly knowledgeable of the Bible and also the works of these two ministers of God's word. . . .

We respectfully believe that the duties correlate with a traditional religious function as the immigration regulations themselves specifically include Religious Translators in the examples of traditional religious occupations. Also, the position requires spiritual commitment to, and a thorough knowledge of, the Bible and ministry of [REDACTED] and [REDACTED] to effectively convey their thought and intention into another language.

the petitioner's Training Administrator, stated that the beneficiary "attended our Bible Truth & Church Service Training Institution" from February 1996 to January 1998.

In a request for evidence dated November 4, 2008, the director instructed the petitioner to explain how the beneficiary's duties relate to a traditional religious function. In response, [REDACTED] repeated some of the assertions quoted above.

The director denied the petition on January 6, 2009, stating "the petitioner failed to explain how the duties of the position relate to a traditional religious function. . . . The content of religious translation is not religious in nature." The director did not address the central importance to the petitioner of the writings of [REDACTED] (who was, in fact, president of the petitioning organization when it filed its articles of incorporation). As the petitioner correctly observed, the regulations, at the time of filing, specifically identified "religious translators" among examples of qualifying religious occupations. The director did not explain how or why the petitioner's reasoning was faulty or inadequate.

The petitioner had also observed that a deep understanding of [REDACTED] religious beliefs is necessary for faithful translation of his works. The director stated: "the petitioner has not explained how [by] attending twenty-four, six-day [petitioner-provided] training an individual could be come well versed in the theology and ministry of [REDACTED] theology." The petitioner did not claim that the beneficiary's knowledge of [REDACTED] theology derived solely from short-term training programs. Rather, the petitioner claims that the beneficiary has been a member of churches affiliated with the petitioner since 1992, and began working for the ministry in 1998.

We find that the petitioner has established that the translation of [REDACTED] religious writings relates to a traditional religious function within the petitioner's religious tradition, and that the beneficiary's position therefore qualifies as a religious occupation. We also find, however, that the petition cannot yet be approved in its current state.

On November 26, 2008, as required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), U.S. Citizenship and Immigration Services (USCIS) published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified:

All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information.

73 Fed. Reg. 72276 (Nov. 26, 2008). *The present petition was still pending on November 26, 2008, and therefore the new regulations apply to the petition. Nevertheless, the director denied the present petition under the old regulations, rather than under the new regulations. Therefore, the director erroneously based the decision on obsolete regulations that were no longer in effect at the time of the decision. The director must make the initial determination as to whether or not the petitioner has met the new regulatory requirements.*

The director must issue a new decision based on the new regulations promulgated on November 26, 2008. Because the new regulations include substantial new evidentiary requirements, the director must also afford the petitioner an opportunity to submit all such evidence that the petitioner did not initially submit, or that the director has not previously requested. 8 C.F.R. § 103.2(b)(8). 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 matter is remanded to the director, California Service Center, for the issuance of a request for evidence (if necessary) and a new decision in accordance with the requirements of the new regulation published at 73 Fed. Reg. 72276 (Nov. 26, 2008). If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.