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U.S. Department of Homeland Security
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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[Redacted]

FILE: [Redacted]
WAC 08 255 51347

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 22 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:

[Redacted]

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).

U. Deadrick
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 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 a grade school teacher. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel asserts that there was an erroneous application of the law and that the director failed to consider all of the facts. 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.

With the petition, the petitioner provided a copy of the October 21, 2002 letter it submitted in support of the Form I-129, Petition for a Nonimmigrant Worker, that it filed on behalf of the beneficiary. In that letter, the petitioner stated that it was a relatively new school, having been established in 2000, and that its “goal is to help the students enter and study in private Christian high schools and, later on, be able to pursue their college education.” The petitioner further stated:

As a Grade School Teacher, [the beneficiary’s] duties and responsibilities will be to teach grade school students religion[,] academic, social and motor skills. She will prepare course objectives and the outline of course study for the students, following the curriculum guidelines or requirements of the state and the school.

[Her] curriculum will be teaching English and Spanish subjects to the students . . . [O]ur community is composed of Hispanic families, and the language barrier [is] clearly evident. Thus, [the beneficiary] will ensure that each student gets the proper training in both languages so that they can communicate with the different nationalities that they will encounter in their day-to-day lives. Likewise, the students will be given the opportunity to express themselves better and be able to understand other cultures in from [sic] a positive point of view.

Included in [her] duties and responsibilities, is to conduct lectures to the students on the different subjects for grade school pupils. . . .

[The beneficiary] will teach in accordance with Christian values the rules of conduct, maintain order in the classroom and playground, and counsel each pupil when adjustment and academic problems arise. She will also maintain a record of the students’ attendance and grading records as required by the school.

In her September 27, 2008 declaration submitted with the petition, the beneficiary stated she “continue[d] to work as a Grade School Teacher” for the petitioning organization and that she

taught “grade school children age-appropriate methods imparting secular state-approved curriculum standards, as well as Christian values and religious studies.” The petitioner provided no additional information about the school curriculum, the subjects taught at the school or any other documentation to corroborate the classes taught by the beneficiary.

In denying the petition, the director stated that the beneficiary’s duties “do not have a full religious significance and embody the tenets of that particular religious denomination,” and that “[t]he mere fact that an individual is a member of a religious denomination working in a facility run by that religious denomination does not establish that the job relates to a traditional religious function.”

On appeal, counsel asserts that the director did not issue a request for evidence [RFE]; however, counsel did not indicate that the director’s decision to not issue such a request was error. We note that the regulation at 8 C.F.R. § 103.2(b)(8) provides:

(iii) Other evidence. If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

Moreover, even if the director had committed a procedural error by failing to issue an RFE, it is not clear what remedy would be appropriate beyond the appeal process itself. We note that the petitioner supplemented the appeal with additional evidence.

On appeal, the petitioner submits a March 5, 2009 declaration from its principal, who states that the petitioning organization is “directly related with the Sol del Valle Christian Reformed Church, and the Bethel Christian Reformed Church” and that its “sole purpose . . . is to extend and expand the Reformed Christian ministry in the geographical community.” [REDACTED] also states that while the school is “an accredited private school,” it “must also teach secular subjects; otherwise it runs the risk of losing its state accreditation.” [REDACTED] further states:

However, secular subjects are taught imbued with our Reformed Christian Church’s teaching and basic tenet that all Reformed Christians profess that god not one-square inch of God’s creation is outside God’s control. For shorthand purposes, we call this the Reformed Christian Worldview/Lens.

According to [REDACTED] the beneficiary’s duties require her to instruct students “imbued with the Reformed Christian Worldview/Lens, as mandated” by its board. The petitioner, however, submitted no documentation from its board regarding the specific requirements to teach in its school and submitted no documentation regarding any specific requirements required

by its parent organization. We note that the petitioner's 1988 articles of incorporation initially indicated that its purpose was:

to promote the general welfare of developmentally disabled children, adolescents and adults; to foster the development of programs, services and facilities in their behalf; encourage research relating to their handicaps, advise and aid parents in meeting their childrens [sic] needs; to foster better public understanding of such disabilities; to work cooperatively with public, private, and professional organizations to maximise [sic] programs, services and facilities; to acquire housing to allow them to become an integral part of community life; to solicit and receive funds for the accomplishment of these purposes.

In 2004, the petitioner initiated documentation to change its name to the one it currently uses. It also passed the following resolution:

RESOLVED:

that with respect to the furtherance of its purposes to promote the general welfare of developmentally disabled children, the organization shall operate a Christian School in order to better respond to the needs of the general population which it currently serves.

We note that the petitioner did not officially resolve to set up a school until four years after it stated it began in 2000 and two years after the date that the beneficiary began working for the organization in 2002. The petitioner's articles of incorporation, therefore, do not support [REDACTED]'s statement that the organization's "sole purpose . . . is to extend and expand the Reformed Christian ministry in the geographical community." As the director stated, "[t]he mere fact that an individual is a member of a religious denomination working in a facility run by that religious denomination does not establish that the job relates to a traditional religious function."

Although the petitioning organization was apparently the outgrowth of two churches, the petitioner has submitted no documentation of any religious limitations regarding hiring teaching personnel that was placed on it by these churches as claimed by counsel. The documentation provided does not sufficiently establish that the beneficiary's duties primarily relate to a traditional religious function or that her duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

The petitioner has failed to provide sufficient evidence that the position of grade school teacher, whose primary responsibility is to teach secular subjects such as English and Spanish, constitutes a religious occupation as contemplated by the regulation at 8 C.F.R. § 204.5(m)(5). The beneficiary's statement on appeal indicates that in addition to directing "weekly chapels" as previously claimed, she now claims to also lead her students in daily prayers. Such general claims are insufficient to establish that her primary duties involve carrying out the religious beliefs of her church.

Beyond the decision of the director, the petitioner has also failed to establish that it is a bona fide nonprofit religious organization.

As discussed above, the petitioner's articles of incorporation indicate that its primary job is to promote the general welfare of the disabled through certain advocacy programs, and that a school was established to help meet that purpose. 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 [Internal Revenue Code] of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

The petitioner submitted a copy of a March 10, 2005 letter from the Internal Revenue Service (IRS) to the Christian Reformed Church of North America, indicating that it had been granted a group tax exemption under section 501(c)(3) as an organization described under sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC. The petitioner also provided two August 1997 letters from the director of finance for the Christian Reformed Church indicating that Sol Del Valle Iglesia Cristiana Reformada and Bethel Christian Reformed Church were covered under the group exemption granted by the IRS. The petitioner submitted the separate articles of incorporation for both churches. However, the petitioner submitted no documentation to establish that it is covered under the group exemption granted to the Christian Reformed Church or that it has been granted an individual tax-exempt status under section 501(c)(3) of the IRC as a religious organization.

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 [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 of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, 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 has not submitted any of the documentation set forth in the above-cited regulation. Therefore, it has failed to establish that it is a bona fide nonprofit religious organization.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to submit the following:

Attestation. An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. If the alien is a self-petitioner and is also an authorized official of the prospective employer, the self-petitioner may sign the attestation. The prospective employer must specifically attest to all of the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;

(ii) The number of members of the prospective employer's organization;

(iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;

- (iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;
- (vii) That the alien will be employed at least 35 hours per week;
- (viii) The specific location(s) of the proposed employment;
- (ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;
- (x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;
- (xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
- (xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

The petitioner failed to submit the above attestation.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.