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Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
SRC 06 219 52838

Office: CALIFORNIA SERVICE CENTER

Date: MAR 09 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.

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 petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director determined that the petitioner had failed to submit required evidence, and therefore the director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

Materials in the record variously describe the petitioner as "an interdenominational Christian organization" and an "interdenominational missionary 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 an academic dean/minister of the petitioner's International School of Ministry. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious vocation or a religious occupation.

In response to the certified decision, the petitioner submits a brief and several exhibits, many of them 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).

The issue under consideration is whether the petitioner seeks to engage the beneficiary's services in a religious vocation. The director's secondary finding, that the beneficiary's position does not qualify as a religious occupation, is contingent on the finding regarding the vocation issue. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines religious vocation as:

[A] formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of individuals practicing religious vocations include nuns, monks, and religious brothers and sisters.

The petitioner filed the petition on July 13, 2006. In a letter submitted with the initial filing, the late [REDACTED], then the petitioner's vice president and treasurer, stated:

[The beneficiary] became a member of [the petitioning organization] and took vows . . . with this organization July 4, 1996. She has been involved with our local South African branches for years. . . .

[The beneficiary] has been an ordained minister since July 17, 1997 by [REDACTED]. [REDACTED], a sister organization of [the petitioner], has also ordained her [on] March 16, 2002. . . . She has been duly set apart by solemn ordination, to do the full work of the Gospel Ministry, and is thereby authorized to preach and to administer its ordinances and sacraments wherever God in His great Providence may call.

She was trained and has experience in university administration at the University of Transkei in South Africa. Due to her qualifications as an administrator in higher education, and due to the call of God on her life to serve Him as [a member of the petitioning organization], we called for her to come for training at our headquarters beginning in July, 1999. . . .

She has served on R-1 status continuously since February 2004 as Student Administrator, Student Registrar and now Academic Dean/Minister for the [petitioner's] International School of Ministry (ISOM). She has overseen the registration and records of all students, admissions, screening and interviewing applicants, evaluating credit standing of all students, setting forth the curriculum for each student and the overall departments (Theology, Ministries, Divinity, Christian Education and Nouthetic [Christian] Counseling), development of protocol for the Intensives (the schedule of Classes and Core Curriculum which will be taught), administration of Graduation Ceremony, counseling with students, and administering the sacraments as needed. . . .

For your information I have enclosed a copy of the vows each new member must pronounce during our public gatherings. This is the vow made before God, which every member agrees to live by and up to.

The initial submission, as it now stands in the record, does not appear to include a copy of the vows.

On December 11, 2006, the director issued a request for evidence (RFE) instructing the petitioner to submit additional documentation regarding, among other things, the duties of the proffered position and terms of employment. In response, [REDACTED] president of the petitioning entity, stated:

[There] is an all-volunteer, unsalaried staff at our Headquarters. . . . None of us receives a salary and never has.

We also have an “adoptee” program through which one or more of our Branches will faithfully send financial gifts, as they are moved by God to do so, for the staff member’s personal use. . . .

[The beneficiary’s] “employment” will be a full-time, unsalaried position. . . .

As a full-time religious worker, she has the following ministerial/vocational duties:

- Overseeing the registration and records of all students
- Admissions – screening and interviewing applicants,
- Evaluating credit standing of all students,
- Setting forth the curriculum for each student
- Counseling with students,
- Administering the sacraments as needed.
- Preaching as needed.

Since becoming the Academic Dean her duties also include:

- Setting forth the curriculum for overall departments
(Theology, Ministries, Divinity, Christian Education and Nouthetic
[Christian] Counseling),
- Development of protocol for the Intensives (the schedule of Classes and Core Curriculum which will be taught), Administration of Graduation Ceremony.

The petitioner submitted a copy of the petitioner’s vows (called a “covenant” in some documents). The covenant reads, in part: “I will sleep where You want me to sleep, I will eat what You give me to eat, and when I have nothing I will not complain.”

The director issued a second RFE on August 14, 2007, stating that “[a] letter simply stating that one has taken vows does not suffice for evidence” that the beneficiary has made a lifelong commitment to a religious vocation. In response, [REDACTED] of the petitioning entity, stated:

Becoming [a member of the petitioning organization] includes first being a believer in Jesus Christ and being filled with the Holy Spirit, living a life of holiness, whether married or single. Upon realizing a call of God upon his/her life, the individual continues to seek God for a further anointing in his/her life. . . . Once this seeking period is accomplished, the individual makes application, submitting a written testimony for consideration to become [a member]. . . . Upon acceptance, the individual waits for an opportunity to publicly make their vows before God in a specified event. These **vows** are **permanent**, and indicate a life-long commitment of devotion to serve the Lord wherever and however He may lead, laying down their personal wants and needs as a consecration to God. . . . This may or may not lead them to public ministry. Some will serve Him in prayer and intercession first and foremost. Some may continue to work in secular jobs, seeking to live a consecrated life in the workplace and bring glory to God there.

Individuals who have made this type of dedication may follow on to become a part of a Branch of the [petitioning entity] in their locality. Others who feel called by God to a deeper dedication to the faith walk may make application to come on the staff of the headquarters, one of our ministry houses or to mission field service whether short or long term. . . .

The organization continues to offer housing and food to its staff even when the person is unable to continue in their work due to a medical requirement to retire, so long as it is possible and extended nursing care is not required.

The director denied the petition on December 6, 2007, in part because “[t]he petitioner has not submitted the requested evidence to establish the proffered position qualifies as a religious vocation.” The director noted: “It is common in many religions for lay members of the congregation to partake in religious vows or rituals that commit themselves to their particular religious denomination without being considered to have been engaged in a religious vocation for the purposes of qualifying for this immigration benefit.” The director added: “Since the petitioner has not established that the proffered position qualifies as a religious vocation . . . the petitioner must establish the beneficiary has been employed in a qualifying religious occupation for the required two year period.” Therefore, the finding regarding a religious occupation is contingent on the finding that the beneficiary is not engaged in a religious vocation.

On appeal from that decision, [REDACTED] stated: “It is not the taking of the . . . vows themselves that designate a vocation (calling to a religious life), but **the total, holy lifestyle of commitment to the “faith walk” (i.e. “living by faith”), and the practice of prayer, fasting, sexual purity, worship and devotion *does* designate a religious vocation**” (emphasis in original).

On December 12, 2008, the AAO remanded the petition to the director for consideration under substantially revised regulations, including new evidentiary requirements. On February 4, 2009, the director advised the petitioner of the revised regulations and allowed the petitioner an opportunity to submit newly required documents. The petitioner timely responded to this notice, submitting the required materials.

On June 19, 2009, the director again denied the petition, using language nearly identical to the wording of the earlier denial notice. The director certified the petition to the AAO for review.

Following the certified decision, [REDACTED] stated:

Those who join our Community of Brothers and Sisters *demonstrate their commitment* to the Lord by a lifestyle of **“living by faith” in an unsalaried environment as brothers and sisters, serving in a communal fashion. This, in effect, is a renunciation of any claim to secular employment for personal support, and it is the belief, practice, and observance of our Religious Community of brothers and sisters. “Living by faith” is in fundamental nature much the same as a vow of poverty** as practiced by the priests, nuns and brothers of the Roman Catholic Church. In addition, our Religious Community members practice a life of prayer, fasting, devotion, and worship, as do the religious communities of different denominations, particularly Roman Catholic, Episcopalian and Lutheran orders. . . .

While living in our Religious Community, members rely solely upon God for their needs, not taking supplemental employment or soliciting funds for their support, in the same way that most nuns and monks live. While they are here, they receive their room and board and have access to donated clothing and personal items, as well as access to Emergency and Mercy Funds for any unexpected need that may arise, and offerings from our Branches, as mentioned in previous documentation.

To establish the vocational nature of living and working arrangements at the petitioning entity, the petitioner has submitted letters from members. One member, [REDACTED] included a copy of her application to ISOM. One of the requested items on the application form is “Church Affiliation.”

Another witness [REDACTED] stated:

I have been a staff member of [the petitioner’s] headquarters . . . since August of 1999. I came here from [the petitioner’s] retreat house in Niagara Falls, New York, where my wife and I held prayer meetings and Bible studies as well as maintained the property. . . .

My wife and I were at one time the only Roman Catholics on staff. As an active Catholic attending *Mary Mother of God* parish in Harrison, AR, I am an extraordinary Minister of the Eucharist and Minister of the Sick. . . . We all come with different backgrounds and experience. Although we attend different 'churches' we hold a common belief that Jesus Christ is Lord and He commanded us to go forth and preach to all Nations.

The above information clearly indicates that the petitioner's staff includes members who are active members of different religious denominations.

In an attestation dated March 2, 2009, [REDACTED] had stated that the petitioner "is an interdenominational missionary organization and as such is considered a religious denomination on its own." This statement is based on the former 8 C.F.R. § 204.5(m)(2), which stated: "an interdenominational religious organization . . . will be treated as a religious denomination."

The proposed rule suggested revisions to the regulations which contained language with a similar provision, referring to "[m]embership in religious denominations, including interdenominational organizations." 72 Fed. Reg. 20442, 20452 (April 25, 2007). That language, however, was removed from the final regulation published in November 2008. The current USCIS regulations at 8 C.F.R. § 204.5(m) contain no reference to interdenominational organizations, and do not state that such organizations count as religious denominations in their own right. Earlier versions of the regulations are obsolete, and the proposed rule of 2007 never had legal force.

The petitioner has acknowledged that it is not a religious denomination in its own right, and there is no evidence that it belongs to a religious denomination. Rather, the record indicates that the petitioner is an interdenominational organization whose staff includes active members of various denominations. As such, a position with the petitioning organization cannot qualify as a religious vocation, because the definition of "religious vocation" at 8 C.F.R. § 204.5(m)(3) specifically requires: "The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions."

More broadly, the new regulations contain no provision for interdenominational organizations at all. The regulations require denominational affiliation (*see, e.g.*, 8 C.F.R. § 204.5(m)(1)), and the petitioner has not met this essential and fundamental requirement. Without denominational affiliation, or status as a denomination in its own right, the petitioner lies outside the class of organizations that can properly file petitions for nonimmigrant or special immigrant religious workers. The admittedly religious character of the activities at the petitioning organization is not, by itself, sufficient in this regard.

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 affirm the director's finding that the petitioner has not shown the beneficiary's position to be a religious

vocation or occupation, based on an underlying finding that the petitioner is neither a religious denomination nor affiliated with such a denomination.

ORDER: The appeal is dismissed.