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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **MAR 16 2010**  
WAC 07 081 50054

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

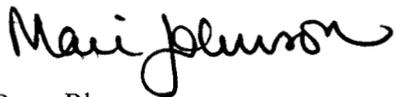
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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).

  
2 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.

The petitioner is a church affiliated with [REDACTED] in Lagos, Nigeria. 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 supervisory teacher and Sunday school coordinator. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition, or that the beneficiary's position qualifies as a religious occupation.

In response to the certified decision, the petitioner submits arguments from counsel, witness letters, and various other documents.

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 we will address concerns the beneficiary's experience. The U.S. Citizenship and Immigration Services (USCIS) 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 January 22, 2007. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

(11) *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 a letter accompanying the initial filing of the petition, [REDACTED] stated that the beneficiary "has been employed as Supervisory Teacher and Sunday School Coordinator by [the petitioner] starting September 1, 2004 to the present," and that the church wants the beneficiary "to continue work as the full-time Sunday School Coordinator and Sunday School Teacher for the coming years." Regarding the beneficiary's compensation, [REDACTED] stated:

[The beneficiary] has been and continues to be provided housing, living expenses and transportation through [the petitioning] Church through the generosity and commitment

of congregation members and the [petitioning] Church community. In addition, she receives a cash salary of \$200 per month.

On April 2, 2007, the director issued a request for evidence (RFE), instructing the petitioner to provide details about the beneficiary's work history during the 2005-2007 qualifying period, including evidence of compensation and "the number of hours worked."

In response, the petitioner submitted copies of IRS Form 1099-MISC Miscellaneous Income statements and Form 1040 Individual Income Tax Returns, indicating that the petitioner paid the beneficiary \$800 in 2004 and \$2,400 per year in both 2005 and 2006. The beneficiary dated all three income tax returns April 1, 2007.

Copies of the beneficiary's bank statements show deposits totaling \$1,800.00 in late 2004, \$2,900.00 in 2005, \$3,285.54 in 2006 and \$1,396.12 in early 2007. IRS Form 1099-INT Interest Income statements indicate that the beneficiary had additional funds in at least one interest-bearing account, with year-end balances of \$2,016.99 in 2004, \$3,061.97 in 2005 and \$4,174.08 in 2006. These bank documents reflect modest additional income beyond the monthly \$200 salary payments from the petitioner, but do not show the source of that income.

In a letter dated May 10, 2007, [REDACTED] repeated that the beneficiary "is provided free of charge housing, food, and transportation by friends and members of the [petitioning] Church community." He added that most of the beneficiary's "clothing is provided by her relatives in Nigeria and transported to the US by church members and friends."

A "Weekly Schedule" indicated that the beneficiary worked six hours a day Tuesdays through Fridays, seven hours on Saturdays, and four hours on Sundays, for a total of 35 hours per week, not counting occasional special projects.

[REDACTED] stated that the beneficiary "is provided medical insurance coverage through the Physicians Care Clinic of Dekalb Medical Center in Decatur, Georgia (Refer to attached letter.)"

[REDACTED] of the Physicians' Care Clinic, stated: "The Physicians' Care Clinic provides care for uninsured, low income Dekalb residents. [The beneficiary] applied and was accepted into the Physicians' Care Clinic program in December 2002. [The beneficiary] is currently a patient and we continue to provide her with medical care, as required."

The director denied the petition on August 8, 2007, based in part on a finding that the beneficiary's salary is so low that it cannot possibly reflect full-time employment. The director also observed that the beneficiary prepared three years' worth of tax returns the month the director issued the RFE. The director found that [REDACTED] statement that the Physicians' Care Clinic "provides care for uninsured" patients contradicted [REDACTED] assertion that the beneficiary "is provided medical insurance coverage."

On appeal, counsel stated that the director failed to consider the beneficiary's non-salaried compensation. The beneficiary asserted that she had previously been assured that her annual income was so low that she was not required to file tax returns. In a separate letter, the beneficiary claimed that the petitioner had offered her health insurance, but the terms would have required her to change physicians and she was already satisfied with the care she received from the Physicians' Care Clinic. Copies of medical documents show that she received such care in 2002 and 2003, before she began working for the petitioner in September 2004.

Counsel protested that the director impermissibly required the petitioner to provide health insurance to the beneficiary. The issue, however, is that the petitioner had claimed that the beneficiary received "insurance coverage," while the record shows that she received care for the "uninsured." This apparent contradiction is what concerned the director. It is clear from the record that the Physicians' Care Clinic is a health care provider, not an insurance company, and therefore the beneficiary would not receive insurance coverage through the clinic. It appears that [REDACTED] mistakenly characterized the beneficiary's care as "medical insurance coverage," thereby creating the appearance of a contradiction.

On November 26, 2008, while the appeal was pending, USCIS published new regulations that applied to all pending petitions. On December 12, 2008, the AAO remanded the petition to the director for a new decision under the revised regulations.

On May 14, 2009, the director advised the petitioner of the new documentary requirements and allowed the beneficiary an opportunity to submit newly-required evidence. In response, the petitioner submitted a letter from [REDACTED] and [REDACTED] who stated:

My wife and I are both members of the [petitioning] Church in Atlanta and visit Nigeria on a regular basis.

It has been our pleasure to assist . . . [the beneficiary's] father, in watching over [the beneficiary] since she moved to the United States. My wife and I have been happy to carry clothes and other personal items sent to [the beneficiary] from her family. On various occasions, [the beneficiary's] father has also given us . . . money for [the beneficiary]. . . .

[The beneficiary's] selfless devotion and commitment . . . led my wife and I earlier this year, to purchase a used car for [the beneficiary] as an expression of our gratitude for all she does for others. We assist her in paying the insurance on the car.

The beneficiary stated that "fellow church members . . . provide me with free housing, food, and transportation," but the only members she identified were the [REDACTED]. The [REDACTED] did not indicate that the beneficiary's continued church work was a condition of their ongoing support. Their assertion that the beneficiary's father is "our good friend" appears to provide a motivation that is unrelated to the beneficiary's employment.

The director denied the petition on July 10, 2009, based in part on the finding that the petitioner had not credibly and sufficiently documented the beneficiary's claimed prior qualifying employment. The director stated: "the petitioner indicates that the beneficiary receives free housing, living expenses, and transportation through congregation members. Remuneration for services must come directly from the petitioner. Payments made by congregants may merely be viewed as gifts and not in remuneration for the beneficiary's services." The director also found that the beneficiary's compensation is well below the federal minimum wage.

In response to the certified decision, [REDACTED] claimed that the beneficiary "has consistently refused our offers to increase her compensation," and noted that "many full time positions in the religious sector, for example, Nuns and Monks, are not compensated based on minimum wage."

Nuns and monks work in religious vocations rather than religious occupations, and therefore a direct comparison between them and the beneficiary would be inaccurate and misleading.

8 C.F.R. § 204.5(m)(11)(ii) requires that "the petitioner must submit IRS documentation of the non-salaried compensation if available." Because the intended future compensation is comparable to the claimed past compensation, it is instructive to quote 8 C.F.R. § 204.5(m)(10) here:

*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.

8 C.F.R. § 103.2(b)(2)(i) sets forth the requirements relating to secondary evidence:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Here, the petitioner has submitted IRS documentation of minimal compensation, but with respect to the remainder of the beneficiary's material support, the petitioner has offered only vague assertions that unnamed church members provide the beneficiary with housing and other support of indeterminate value. The joint letter of two witnesses, who claim (without proof) to have purchased a car for the beneficiary, is not "comparable, verifiable evidence" on a par with IRS documentation. Furthermore, such a letter does not compel the conclusion that other unidentified church members did, and will, support the beneficiary, and that this support has been directly contingent on her continued work for the petitioning church.

Furthermore, 8 C.F.R. § 204.5(m)(7)(xii) requires the prospective employer to attest that it 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. The sum of \$200 per month is too low to meet this threshold. The regulations do not permit the prospective employer to avoid this requirement by claiming that unnamed third parties will meet the beneficiary's remaining material needs. Even if parishioners have, in the past, provided the beneficiary with food, shelter and other necessities, this is not a binding guarantee that they or others will continue to provide these amenities in the future.

As noted in the above discussion, we do not agree with all of the director's specific findings. Nevertheless, upon consideration of the evidence of record, we agree with the director's core finding that the petitioner has not submitted adequate evidence to establish that the beneficiary has and will continue to engage in continuous, qualifying employment.

The second and final stated basis for denial concerns the nature of the beneficiary's claimed duties with the petitioner. The 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 his introductory letter, [REDACTED] stated:

The Sunday School program reaches all ages and supports the worship services through instruction in the faith, learning the stories of the Bible, and incorporating faith into one's life everyday.

[The beneficiary's] responsibilities included research into materials available and their costs and limits on reproduction, selection of age appropriate and text appropriate materials for class study as well as study guides for the teachers and Sunday School leaders, planning and presentation to classes for children and youth. She provides hands-on, tactile sense work projects to assist the children in understanding and retaining the religious message and selects, designs, and produces the craft projects to be prepared and carried out her or through her direction with the youth of the church to convey the spiritual message.

The petitioner submitted copies of various materials relating to its Sunday school program, including several booklets entitled *Search the Scriptures*.

In the April 2007 RFE, the director requested additional information about the beneficiary's position. In response, [REDACTED] stated:

[The beneficiary] is responsible for the planning and material development of the Sunday School curriculum for 3 classes for children of ages ranging from 2 to 8 years. She teaches two of the classes for the children aged 2 to 6 years. In addition to her teaching responsibilities, [the beneficiary] is coordinating the Sunday School classes which includes supervising one other Sunday School Instructor.

In addition to her responsibilities as Sunday School Coordinator, [the beneficiary] works on special projects assigned by me. These include but are not limited to preparing the materials and presentations for specific training sessions offered at our three annual . . . Church Conferences.

An accompanying job description listed eight "Speci[fi]c Duties":

1. Plan and develop a Sunday School curriculum for 3 classes for children of ages ranging from 2 to 8 years. Teach one or more of the classes for the children aged 2 to 6 years.
2. Work with the teachers to develop a teaching schedule that is acceptable to all.
3. Attend the Saturday meetings with the teachers to assess progress and address concerns.
4. Manage the Sunday School budget including the development of the annual budget;
5. Prepare and present reports on the Sunday School at the Parish Council

6. Work with the Parish Council to develop Sunday School Policies;
7. Participate in at least two of the three annual . . . Church Conferences.
8. Work on special projects under the guidance of the Parish Pastor and Parish Council.

In the August 2007 denial notice, the director found that “[m]any of the [beneficiary’s] duties are administrative,” and did not become religious simply because they related to the administration of a Sunday school. On appeal, counsel argued that religious instruction is a traditional religious function.

The director’s May 2009 notice, which followed the AAO’s December 2008 remand order, did not address the issue of whether or not the beneficiary’s duties relate to a traditional religious function. In the certified denial of July 2009, the director repeated language from the 2007 decision, stating:

The beneficiary’s duties do not relate to a traditional religious function. Many of the duties are administrative in nature; attending meetings, managing a budget, prepare/present reports, developing policies. The fact that the duties revolve around the central theme of Sunday School, does not make them less administrative and more religious in nature. The majority of the duties are secular, *i.e.* teaching and administrative work. In this instance, the duties of the occupation do not have religious significance and embody the tenets of that particular religious denomination.

In response to the certified decision, the petitioner submits letters from two witnesses who attest to the religious nature of Sunday school teaching. Neither witness belongs to the petitioner’s religious denomination; one witness is Antiochan Orthodox, while the other is Methodist. Nevertheless, their statements are consistent with the proposition that religious education has a self-evident role in inculcating the religious creed and beliefs of a given denomination.

We note that the former USCIS regulation at 8 C.F.R. § 204.5(m)(2), prior to the 2008 revision of the regulations, included a list of qualifying examples in the definition of the term “religious occupation”: “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.” When USCIS revised the regulations in 2008, supplemental information published with the regulations indicated that USCIS “removed the list of examples to eliminate confusion.” 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Therefore, the removal of the term “religious instructors” should not be construed to mean that such individuals are no longer considered to work in a religious occupation.

When the director stated that “teaching” is a “secular” function, the director neglected to take into account the subject matter being taught. Some subjects are, indeed, inherently secular, such as mathematics. Here, however, the beneficiary is said to teach not at a school or a day care center, but at a Sunday school, which exists only for the purpose of inculcating the religious creed and beliefs of the petitioning church.

With regard to the petitioner's detailed list of the beneficiary's duties, it is true that most of the eight listed duties are administrative and therefore secular in nature. This does not mean, however, that each listed item takes up an equal portion of the beneficiary's working time. From the evidence and information presented, it is clear that the content of the instructional materials is religious in nature. The administrative duties appear to be incidental to the duties of a religious instructor; there is no evidence that the beneficiary is first and foremost an administrator with only token religious duties.

For the reasons discussed above, we withdraw the director's finding that the beneficiary's duties, as described, are primarily secular. This is separate from our finding, above, in which we agree with the director that the petitioner has not shown the position to be full-time.

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 denial of the petition.

**ORDER:** The director's decision of July 10, 2009 is affirmed.