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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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FILE: WAC 09 019 51075 Office: CALIFORNIA SERVICE CENTER Date: **MAY 06 2010**

IN RE: Petitioner:
Beneficiary:



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 on appeal. The AAO will withdraw the director's decision. Because the petition cannot be approved without further evidence, the AAO will remand the petition for further action and consideration.

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 brother in its religious order. The director determined that a site visit failed to substantiate the petitioner's claims.

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 October 31, 2009, 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 October 31, 2009, 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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(12) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning

organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

In its documentation submitted in support of its October 28, 2008 petition, the petitioner stated that the position is that of a brother (a gender-neutral title) in its religious order, and outlined the beneficiary's primary duties and responsibilities, which it stated comprised a minimum of 50 hours per week, as follows:

1. To endeavor to be in full communication and communion with God . . .(100%) . . .
2. Dedication to the practice of spiritual transformation and awakening (50% not including personal contemplation time.)
 - Daily communal worship and prayer
 - Daily active prayer and meditation and healing light service
 - Daily scriptural reading and studying the text of *A Course in Miracles* and the *New Testament*
 - Daily study using audio/visual media
 - Daily Workbook Lesson practice from *A Course in Miracles*
 - Personal prayer and silent meditation
 - Vespers
 - Weekly study groups and other religious meetings.
3. Head of Publications and Editing (35%)

The specific service assigned to [the beneficiary] is to oversee all publications; books, booklets and brochures for [the petitioner] and it's [sic] outreach programs, Miracles Prisoner Ministry, Miracles Communication Center, A Course in Miracles International and The Miracles Healing Center.
4. To undertake service in the daily maintenance and support of monastic living (10%)
 - Working along side brothers, novices and retreatants [sic] in daily basic duties.
5. To be available to perform service to the Church community and to be supportive of all the activities of the Church (5%)
 - Helping and supporting Church members and the community at large. Extending the action of service to the wider community.

The petitioner's documentation indicates that the individual makes a final vow of atonement as a condition of acceptance into the order. The Articles of Association also indicate that members of the order and officers are not salaried and that the order would provide members "with all their basic needs. Urgent or unexpected needs of Members shall be taken care of by the Church and congregation in so far as it is within their means to do so." The petitioner provided photographs of its facilities and a floor plan indicating that it was the beneficiary's personal living space.

The petitioner also provided a November 5, 2006 employment contract that it entered into with the beneficiary for her services as a "full member" of the order. The contract is for the period November 1, 2006 to March 12, 2009, and estimates the beneficiary's remuneration of full room and board at \$300 per month. The petitioner also stated in a March 9, 2009 letter, submitted in response to the director's request for evidence (RFE) that in July 2008, it began paying members "a small cash stipend for incidental expenses." The petitioner provided copies of the beneficiary's Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, for 2006, 2007, and 2008, and a copy of the beneficiary's IRS Form W-2, Wage and Tax Statement, for 2008. The beneficiary reported \$3,600 of in-kind compensation (room and board) on her 2006 return and reported \$3,600 in "wages, salaries, tips, etc" on her 2007 return. The IRS Form W-2 reflects that the petitioner paid the beneficiary approximately \$1,560 in wages and provided her with room and board valued at \$1,600. The beneficiary included both amounts on her 2008 IRS Form 1040.

On May 11, 2007, a compliance review in connection with a petition filed on behalf of another beneficiary was conducted by an immigration officer, who noted that the petitioner's facilities included a "25,000 Square Ft main Building on former resort grounds with 5 other former hotel and residential facilities used to house congregation and 'healing center.'" The investigating officer concluded that the petitioning organization had over \$6 million in assets, "active contributions and \$88,000 in Cash assets," and that the "grounds appear sufficient to house 45-60 volunteer R-1 staff." The investigator noted that the beneficiary of the petition that was the purpose of the site review "was present on the grounds with a large drain-snake for unclogging pipes." The investigator stated that the individual he interviewed explained that "a large part of the R-1's work is personal self-development which occurs at all times during the [individual's] life in the church and is akin to monasticism."

In denying the petition, the director stated that the compliance review "verified that the employees were not compensated for their services" and that while the investigator concluded that "the grounds were sufficient to house 45-60 volunteer R-1 staff[,] the petitioner makes no reference as to where the remaining R-1 religious workers" are housed. The director also concluded that the beneficiary's IRS Forms 1040 were inconsistent and therefore it could not be determined whether "workers are all being compensated for their duties."

It is not clear why the director focused on the adequacy of housing for R-1 workers. The investigating officer indicated that the church had between 45 and 60 R-1 nonimmigrants working at the church and concluded that the petitioner's facilities were large enough to house the R-1 workers that it employed, including, apparently, the beneficiary of this petition, who was present in the United States under a valid R-1 nonimmigrant visa. It is not clear that the investigator reviewed

housing provided for members of the petitioner's religious order. Further, while the investigating officer stated that individuals did not receive "compensation," this appears to be a question of word choice as he did not find evidence to dispute the petitioner's claim that it provided room and board to its participants. In fact, the investigating officer's report tends to support the petitioner's claim.

The director expressed concern about the lack of a preparer's signature on the beneficiary's tax returns and therefore questioned the authenticity of the forms. The IRS Form 1040 indicates that a preparer's signature is required only if the preparer was paid. Further, the petitioner provided copies of the beneficiary's tax transcripts indicating that her 2006 and 2007 returns were timely filed with the IRS.¹

The director also determined that, based on the compliance review, "all beneficiaries being petitioned as religious workers are assigned work as personal self-development (such as unclogging pipes) which occurs at all times during the religious workers life in the church. Personal self-development duties are not considered a religious occupation." The director therefore concluded that the petitioner had not established that the proffered position was a qualifying religious occupation or vocation.

We do not read the investigator's report to conclude that the individual's "personal self-development" consists of such things as "unclogging pipes." Although these sentences are in proximity to each other, the investigator's full sentence preceding his remark on "personal self-development" is that the beneficiary "[p]articipates as a student in Worship services, personal spiritual meditation, teaches meditation for course in miracles . . . performs maintenance work for facilities (compound): during visit he was present on the grounds with a large drain-snake for unclogging pipes." This is consistent with the petitioner's description of the duties performed by the beneficiary of the instant petition, which includes "service in the daily maintenance and support of monastic living" for approximately 10% of the week. The petitioner indicated that most of the beneficiary's time will be dedicated to worship and prayer, scriptural reading, religious meetings, and oversight of all publications for ministry and outreach.

Accordingly, we do not find that the compliance review failed to support the petitioner's claims regarding compensation or the nature of the proffered position, and we withdraw the director's statements to the contrary.

Nonetheless, the petition may not be approved as the record now stands and the matter is remanded to the director for further clarification.

The petitioner stated that the proffered position was that of a religious vocation and that members were accepted into its order. The regulation at 8 C.F.R. § 204.5(m)(5) provides that:

¹ The IRS transcripts indicated that it had not received the beneficiary's 2008 tax return. However, we note that the inquiry was on February 6, 2009, and the beneficiary was not required to file her taxes prior to that date.

Religious vocation means 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, however, entered into a 15½ month term contract with the beneficiary. Such a contract is not consistent with a “formal lifetime commitment” and it is not clear that the beneficiary seeks to enter the United States for the purpose of engaging in full-time employment as a religious worker. 8 C.F.R. § 204.5(m)(2). The matter is therefore remanded to the director for the purpose of clarifying the position offered to the beneficiary.

Additionally, the petitioner stated in its October 4, 2008 letter submitted in support of the petition that it would provide the beneficiary with room and board valued at \$300 per month. However, the IRS Form W-2 it issued the beneficiary in 2008 indicates that the petitioner provided room and board valued at only \$1,600. This is significantly less than the compensation it initially alleged it would pay. The petitioner provided no explanation for the reduction in the compensation that it provided to the beneficiary in 2008.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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 director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.