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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



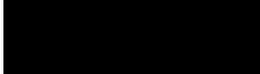
U.S. Citizenship and Immigration Services

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Office: CALIFORNIA SERVICE CENTER Date:

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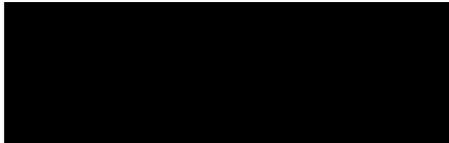
Petitioner:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 dismiss the appeal.

The petitioner is A Roman Catholic school system. 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 teacher and liturgical coordinator. The director determined that the petitioner had not shown that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel.

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 denial of the petition centered on the issue of whether the beneficiary has worked, and will work, in a qualifying religious occupation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines the term "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.

The petitioner filed the Form I-360 petition on July 20, 2009. Asked to provide the beneficiary's daily schedule, the petitioner stated:

The standard daily and weekly work schedule for the alien is actually 4 schedules as follows:

A) Math Teacher:

1<sup>st</sup> period – 7:30-8:40AM (10<sup>th</sup> Grade-Algebra 2),  
2<sup>nd</sup> period 8:50-10:00 (9<sup>th</sup> Grade-Algebra 1),

B) Religion Teacher:

3<sup>rd</sup> period 10:10-11:10 (9th Grade),  
4<sup>th</sup> Period 11:50-12:50 (10th Grade)

C) Liturgical Coordinator

Activity Preparation for Weekly Wednesday Mass: 1:00-1:30.

The responsibility, is [to] prepare for the weekly mass requir[ing] that he prepare the liturgy, select and specify readings, verses, Responsorial Psalms, choir songs and vestment according to the liturgical calendar and Roman missals, prepare and count the host, select student[s] for . . . acolytes, readers, ushers and attend to all details such that everything is ready for the Priest to conduct weekly Holy Mass each Wednesday

D) Religious Counsel at detention: (Additional job due to increase of enrolled student[s])

Monday and Thursday 3:50-4:50, Saturday: 9:00-12:00NN.

The responsibility, is giving religious advice to student[s] that ha[ve] been in school detention program.

The petitioner indicated that the beneficiary's various duties occupied the following hours per week:

Liturgical Job	7.5
Religion Teacher	10
Religious Counseling	5
<u>Math Teacher</u>	<u>10</u>
Total Time	32.5

The director denied the petition on January 21, 2010, stating:

A Liturgical Coordinator is not a permanent full time salaried occupation within the Catholic denomination. In fact, several active [C]atholic churches have parishioners who volunteer liturgical coordination services.

The duties performed by the beneficiary . . . [are] activities that can be performed by any Catholic who is familiar with the liturgy process. . . .

Moreover, USCIS records indicate the beneficiary is primarily a High School Math Teacher, and [the beneficiary's] past work experience has centered on the field of Engineering. . . . The record indicates that the beneficiary is primarily a Math teacher for the petitioning Organization; however, liturgical coordination is a duty accompanying the beneficiary's assigned load of religion classes.

The director did not specifically identify the "USCIS records" containing the above information. From the information available to the AAO, the director apparently referred to a Form I-140 immigrant petition, receipt number SRC 09 151 51636, that the petitioner filed on April 20, 2009. That petition is contained within the same A-file record of proceeding that houses the present petition. That petition relied on approved application for labor certification that the petitioner filed on August 19, 2008. The Form I-140 petition (filed with the Texas Service Center) was approved on May 7, 2009, less than eleven weeks before the petitioner filed the present petition. Because of visa number backlogs, the beneficiary is not yet eligible to adjust status based on that approved petition.

On appeal, counsel states:

The director's statement that these duties "can be performed by any Catholic who is familiar with the liturgy process" is not relevant, arguably not true, and does not logically support the director's conclusion that "Therefore, the petitioner has not established that the duties of the beneficiary's prospective occupation relate to a traditional religious function."

. . . The fact that some [C]atholic churches are able to obtain and train volunteers to carry out some liturgical coordination work is not relevant to the issue of whether that work relates to a traditional religious function nor whether the work of liturgical

coordination at a large [C]atholic school, grades K-12, is not a religious occupation. The nature of the work of liturgical coordination relates to a traditional religious function because it is an integral part of the performance of liturgical religious services.

Counsel appears to be correct in asserting that the work of a liturgical coordinator relates to a traditional religious function. That is not, however, sufficient to establish that such work constitutes a religious occupation. The regulatory definition of "religious occupation" also requires that the denomination recognizes the duties as an occupation. Counsel concedes that the work of liturgical coordinators is sometimes entrusted to volunteers. The burden is on the petitioner to show that such volunteers are the exception rather than the rule within the Roman Catholic denomination.

Also, as counsel acknowledges, the petitioner is not a church but, rather, a school that apparently holds mass only once a week. Given that the primary purpose of the petitioning entity is to educate children rather than hold frequent religious services, it is all the more relevant to establish that the Roman Catholic church routinely and traditionally employs paid liturgical coordinators not only at its churches, but also at its schools.

Counsel states:

The director's statement that: "The record indicates that the beneficiary is primarily a Math teacher for the petitioning Organization;..." contradicts all of the evidence of record which shows that the beneficiary spends less than a third of his assigned work load as a Math teacher.

According to the schedule provided with the petition, the beneficiary spends more time as a math teacher than as a liturgical coordinator, and counsel has defended the latter task as a linchpin of the petition. Also, as we have already discussed, the petitioner has not overcome the director's determination that the role of a liturgical coordinator does not appear to be a religious occupation. Counsel does not address that finding, attempting instead to shift focus to the separate question of whether the position relates to a traditional religious function.

Furthermore, the information available to the director includes the aforementioned Form I-140 immigrant petition, and all its accompanying information that the petitioner freely chose to make known to USCIS. While the petitioner now states that it seeks to employ the beneficiary as a math and religion teacher for \$26,250 per year, the Form I-140 immigrant petition, filed only three months earlier, indicated that the petitioner sought to employ the beneficiary as a "Math Teacher Assistant" for \$13,610 per year. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The job announcement that accompanied the Form I-140 indicated the following job duties:

Will provide instructional support for Math teachers handling secondary and middle school level classroom students in a private school. Support and assist students in

learning class materials using the teacher's lesson plans. Provide individual instructional reinforcement to students, under the guidance of teachers. Grade tests and papers, check homework and keep attendance records.

The beneficiary's résumé, included with the Form I-140 petition, emphasized the beneficiary's background in engineering. At that time, the petitioner did not indicate that the beneficiary would have any religious duties whatsoever.

We agree with the director's finding that the petitioner has not shown the beneficiary's intended position is primarily a religious occupation, because much of his duties are clearly secular, and others have not been shown to amount to an occupation in the petitioner's denomination.

Beyond the director's finding, we note that the petitioner's description of the beneficiary's intended position contains a provision that is, on its face, a disqualifying ground for denial. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petitioner must seek to employ the beneficiary in a full time position, defined as occupying at least 35 hours per week on average. *See* 8 C.F.R. §§ 204.5(m)(2) and (7)(vii). In this instance, the petitioner stated that the beneficiary would work only 32.5 hours per week, a total that counsel repeats on appeal. This schedule, as described, cannot qualify the petitioner for classification as a special immigrant religious worker. On line 10 of the employer attestation that accompanied the petition, the petitioner claimed that the position is in fact full-time, requiring at least an average of 35 hours of work per week, but this simply shows that the petitioner has made contradictory claims. The petitioner did not explain where the extra 2.5 hours would come from to bring the beneficiary's weekly schedule up to full-time. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

We acknowledge that, in the Form I-140 petition, the petitioner indicated that the position was 40 hours per week. This is a qualifying number of hours per week, but that same petition specified that the beneficiary's duties would be entirely secular, relating to teaching mathematics. Therefore, the beneficiary cannot qualify as a special immigrant religious worker by transplanting the I-140 job description into the I-360 petition.

Furthermore, we cannot ignore that the petitioner has failed to submit Internal Revenue Service (IRS) documentation required by the regulations. The regulation at 8 C.F.R. § 204.5(m)(10) reads as follows:

*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.

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. In instances such as this proceeding, in which the petitioner claims that the beneficiary performed the qualifying employment in the United States, the regulation at 8 C.F.R. § 204.5(m)(11)(i) requires the petitioner to submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns. Uncertified copies of tax returns do not satisfy this requirement.

The petitioner has not submitted the documentary evidence described above. Absent this required evidence, USCIS cannot approve the petition. These evidentiary deficiencies, therefore, amount to an additional ground for denial of the petition.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.