

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



C1

**JAN 28 2011**

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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:

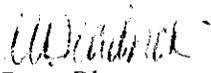
SELF-REPRESENTED

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 \$630. 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 Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner 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 religious instructor. The director initially determined that the petitioner had not established that the position qualifies as that of a religious occupation. The AAO remanded the decision for consideration under new regulations. Upon remand, the director issued a Notice of Intent to Deny (NOID) on June 29, 2009 which informed the petitioner of the deficiencies in the record. The petitioner did not respond to the NOID. Accordingly, the director denied the petition on August 18, 2009 and certified the decision to the AAO for review.

The director's Notice of Certification informed the petitioner that he had 30 days to submit a brief to the AAO. To date, the AAO has received nothing further from the petitioner. Accordingly, the August 18, 2009 decision of the director denying the petition is affirmed.

Notwithstanding that the petition is denied based upon the petitioner's failure to respond to the NOID, we note further grounds for ineligibility. 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 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.

In its October 5, 2006 letter submitted in support of the petition, the petitioner, through its chief operations executive, [REDACTED] stated:

Our mission is providing kosher supervision to food manufacturing plants in order to ensure that they comply with strict Jewish dietary laws. Trained field representatives called “mashgichim” carry out this supervision. Mashgichim are orthodox Jews who undergo rigorous training regarding Jewish dietary laws, guidelines, policies and procedures. We provide continuous training and evaluation to ensure that mashgichim carry out their duties in strict accordance with Jewish law.

The petitioner further stated that the beneficiary’s duties would consist of “coordinating and conducting initial and ongoing training, guidance and support for mashgichim regarding Jewish dietary laws; overseeing the implementation of religious policy and procedures with regard to Jewish dietary laws; serving as liaison among our organization and Mashgichim.”

In a December 11, 2006 request for evidence (RFE), the director instructed the petitioner to submit additional documentation regarding the duties of the proposed position, including a detailed description of the work to be done, specific job duties and a daily and weekly work schedule. The petitioner was also instructed to “explain how the duties of the position relate to a traditional religious function.” In response, the petitioner stated in a February 9, 2007 letter that

the beneficiary had been its religious instructor for kosher dairy laws and procedures since 2004 and that:

At first[, she] was responsible for educating the mashgichim about every single law applicable to kosher production and supervision. On her own initiative, [she] managed to expand this job into an entire department that now proudly has its own Kosher Supervision and Instruction library that includes [the beneficiary's] visual PowerPoint presentations, handbooks, guidelines and video presentations available and accessible to all our mashgichim whenever they are in need of kashrus support. . . .

Moreover, [she] is always assisting our other departments in the office that need organizational restructuring . . . [She] was recently promoted to manage the Kosher Supervision and Consumer Support Department. She provides work schedules for her staff, support, daily meetings to discuss any news or updates happening in the industry, newspaper advertisements and any kosher alerts, provides our kosher production companies with all support and assistance they need, training for mashgichim and new staff members in Kosher Dietary Law, attends kosher food exhibitions and assists with problems that arise at our production facilities and sometimes travels to the facilities to meet with the owners to solve any problems and answer any questions.

[She] has also created a voluntary kashrus workshop for our community. Once a month on a Sunday, we invite the community to our organization to receive an update on the Kosher Food Industry News. She provides a fun and educational 1 hour seminar on what new kosher products may be emerging in the marketplace for the following month, any products that have been mislabeled in the marketplace with a kosher symbol, tips on how to keep a kosher home with new gadgets available that can make your kosher kitchen easier to manage, and answering any consumer questions.

In a second RFE dated April 19, 2007, the director instructed the petitioner to provide a "typical daily/weekly schedule for the beneficiary" and to explain how the beneficiary's duties relate to a traditional religious function. In response, the petitioner submitted a schedule showing the beneficiary's activities for a typical Monday as follows:

9 am to 10 am: Provide religious guidance and support to consumers, rabbinical representatives, and kosher certified customers. Schedule visits for the afternoon to inspect potential customers.

10 am to 11 am: Meet with office staff.

11 am to 1 pm: Conduct training for potential rabbinic field representatives

1pm to 1:30pm: Lunch

1:30 pm to 2:30 pm: Inspect a kosher certified restaurant or production facility that needs an issue resolved.

2:30 pm to 3:30 pm: Advise and review field representative reports.

3:30 pm to 4:30 pm: Review food ingredients and formula request from facilities that would like to use them in their products or restaurants.

4:30 pm to 5:00 pm: Record any kosher news, events and issues that come up during the day and file it in the kosher supervision archives. Make a note of any unfinished issues that need attention during the following day.

In denying the petition, the director determined that while the duties of the position have “some religious significance,” they “continue to be inherently secular in nature.” The director determined that the schedule provided did not indicate that the beneficiary was “principally engaged in traditional religious functions” for “at least 50% of the working time.” The director stated:

The . . . schedule provided show[s] that the beneficiary is involved in areas involving administration, customer service, dealing with production issues, and quality assurance for the majority of her working time. Nowhere in the job description is there mention of words such as evangelizing, study, worship, praise, fellowship, and theology. And instead, reference to secular terms such as customer service, production, inspection, labels, standards and requirements accompany the beneficiary’s line of work.

The director determined that the duties of the proffered position “do not have religious significance and embody the tenets of that particular religious denomination.”

On appeal, the petitioner provided a September 20, 2007 letter from [REDACTED] Pinson, [REDACTED] Coordinator of the [REDACTED] that he states “has been involved in Jewish religious outreach for over 25 years.” [REDACTED] opined:

Not only does [the beneficiary] work in a religious institution, but the job that she does directly relates to traditional religious functions. The nature of the activities performed embody [sic] the tenants [sic] of Judaism and have real religious significance. It can be said that by [the beneficiary] performing the job that she does, she effectively evangelizes Jewish laws of Kosher and enables increased study and worship of the religion. At first glance [her] duties may be perceived to be secular in nature and function, however the reality is that her duties have deep religious significance and her work embodies the tenets of the Jewish religion in practice, form and function. Additionally, my analysis concludes that [she] is

principally engaged in traditional religious functions far more than 60% of the working time.

Rabbi Pinson further states, "The Kosher laws are inherent to the Jewish religion and their promulgation is dependent on religious instructors learning, understanding and then teaching those laws."

The petitioner also provided a letter from [REDACTED] who also opined that "while the petitioner did employ secular terminology in describing the beneficiary's line of work, there is nothing 'inherently secular' about the work described. Indeed [the beneficiary's] job is exemplary of a Religious Instructor role in Judaism." [REDACTED] states that "eating, for a Jew, is a religious act" and that "[t]he production and facilitation of Kosher food products is, therefore, essential for the functioning of an orthodox Jewish community." The petitioner also submitted copies of magazines regarding kosher food and its preparation.

On December 8, 2008, the AAO remanded the petition for consideration under new regulations. On June 29, 2009, the director notified the petitioner of her intent to deny the petition, advised the petitioner of new evidentiary requirements, and informed the petitioner that it was afforded thirty days in which to provide additional documentation and that failure to respond to the notice would result in denial of the petition. The petitioner did not respond to the director's notice of intent to deny and submitted no additional documentation in response to the director's certification of her decision to the AAO.

The director noted that the petitioner's description of the duties of the proffered position omitted the use of certain "buzz" words that would traditionally accompany a religious worker job description. While the use of these words may be suggestive of a religious occupation or vocation, the failure to use them or the use of "secular" terms is not dispositive as to whether a job constitutes a religious occupation or vocation. We withdraw the director's determination to the extent that she relies upon this distinction to determine whether the position qualifies as a religious occupation.

Nonetheless, we share the director's concerns regarding the nature of the position. The proffered position appears to have changed from that of a religious instructor to a supervisory position that includes customer service, production, and inspections. In fact, the petitioner stated that the beneficiary had been "promoted" to her current position. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). If significant changes are made to the initial request for approval, the petitioner must file a new petition.

While it appears that the initial position (religious instructor) offered to the beneficiary may have qualified as religious occupation as that term is defined in the regulation at 8 C.F.R.

§ 204.5(m)(5), the record does not establish that the proffered position is that of religious instructor. Rather, the record establishes that the position currently offered to the beneficiary is that of a departmental supervisor.

Accordingly, the petitioner has failed to establish the nature of the proffered position and that it qualifies as a religious occupation within the meaning of the regulation.

Additionally, the petitioner has failed to meet the requirements of the regulation at 8 C.F.R. § 204.5(m)(7), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

The AAO will affirm the certified denial 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 sustained that burden.

**ORDER:** The director's decision of August 18, 2009 is affirmed. The petition is denied.