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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



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DATE: JUN 02 2011      OFFICE: CALIFORNIA SERVICE CENTER      FILE:

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:

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.

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 sustain the appeal and approve the petition.

The petitioner is a retreat and hospital described as a supporting ministry of the Seventh-day Adventist (SDA) 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 physical therapy aide/hydrotherapist. The director determined that the petitioner had not established that the beneficiary's intended position qualifies as a religious occupation.

On appeal, the petitioner asserts that the director failed to consider a previous, timely submission.

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 in this decision is whether the petitioner seeks to employ the beneficiary in a qualifying 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.

The petitioner filed the Form I-360 petition on June 29, 2009. The petitioner indicated that it has 120 employees. The petitioner's initial submission included a list of 80 position titles and descriptions. Many of the job descriptions include entirely secular duties. The chief accountant, for instance, is "Responsible for bank consolidations, journal entries, financial statements and reports, and account analysis." Several other job descriptions list overwhelmingly secular duties, except for the added phrase "shares Jesus." For example, the physical plant vice president is "Responsible for maintenance of all institutional buildings, grounds and utilities, managers [*sic*] a routine inspection and preventive maintenance of major building systems, including lighting, plumbing, pumping and environmental systems and shares Jesus."

Clearly, the positions at the petitioning institution fall on a wide spectrum ranging from purely religious to entirely secular. The petitioner must show where the beneficiary's position falls along this continuum. To qualify as a religious occupation, it cannot suffice for the position to have some shade of religious significance. By regulation, the duties must relate primarily – not just incidentally – to a traditional religious function within the religious denomination.

In its employer attestation, the petitioner provided the following description of the beneficiary's daily duties:

To work with a wide range of lifeless guests and hospital patients introducing them to Jesus and presenting Bible truths and health topics to them; give hydrotherapy and massage treatments; pray with and for them that God will bless them with healing and comfort; share Christ with and deliver the joyful message of salvation to them and provide them with hope that the gospel message brings deliverance and wholeness to anyone who believes it; explain the benefit of each treatment teaching them how to do them at home; look after their spiritual welfare and providing comfort and support to them; help the patients and lifestyle guests on an individual basis with regard to eight laws of health; give Bible study to those who [are] interested in studying the Bible.

An accompanying letter from [REDACTED] vice president of the petitioning entity, included essentially the same list of duties, in slightly more detail. For instance, [REDACTED] listed the “eight laws of health,” specifically “nutrition, exercise, water, sunlight, temperance, fresh air, rest and trust in divine power.” [REDACTED] stated that the position requires “completion of a medical missionary training course from a qualified SDA institution,” “Certificates in Hydrotherapy and Massage” and “Two-year membership in the Seventh-day Adventist Church.”

The petitioner submitted copies of certificates that the beneficiary earned from the petitioner’s [REDACTED]. On December 9, 2006, the beneficiary earned certificates in health evangelism, hydrotherapy and massage. On March 7, 2009, she completed courses in Bible study, witnessing and sanctuary.

On August 18, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit additional evidence to show that the beneficiary’s duties primarily relate to a traditional religious function and that the denomination recognizes those duties as a religious occupation. The director stated that the petitioner’s response was due no later than September 29, 2009.

The record contains a letter from [REDACTED] dated August 19, 2009, providing general information about the beneficiary’s job offer and compensation. The director denied the petition on September 29, 2009, citing this letter as the petitioner’s response to the RFE. The director stated that the petitioner failed to submit “a letter from a Superior or Principal of the denomination.” The director’s request for evidence did not include any instruction to submit such a letter. The director also stated: “The record does not demonstrate that the proposed duties of the position are sufficiently specialized in a theological doctrine as to constitute a religious occupation.” The director did not explain how this standard relates to the regulatory definition of a religious occupation.

On appeal, [REDACTED] asserts that the petitioner did not intend its August 19, 2009 letter to be the petitioner’s response to the RFE. The record supports this assertion. The date on the letter is only one day after the issuance of the RFE; [REDACTED] stated that the petitioner had even received the RFE when it prepared that letter. It appears, instead, that the RFE and the letter crossed in the mail. Also, the letter contained no reference to the RFE. Instead, the body of the letter began: “This letter is being written in support of the [beneficiary’s application for] adjustment of status.” Though related to the petition, the adjustment application was a separate matter.

The record contains a timely and substantial response to the RFE, but there is no indication that the director considered it before rendering the decision. The director received the response on September 29, 2009, the same date shown on the denial notice. The response included extensive background information about SDA doctrine as it relates to health and related issues such as diet.

The petitioner also submitted copies of several letters from various witnesses, offering assertions about the petitioner and/or SDA health care in general. The petitioner, on appeal, notes that one of those letters is a December 9, 2007 letter from [REDACTED]

██████████ states that ██████████ is “a ██████████”, ██████████ listed several different positions, including “physical therapy aid[e]s/hydrotherapists,” and asserted that each of them “is involved and presenting and practicing a ‘health message’” consistent with SDA beliefs. ██████████ stated: “These healing practices were originated within the Adventist church itself, have religious significance and embody the tenets of our religious tradition.” Significantly, ██████████ did not claim that every worker at an SDA health care facility works in a religious occupation; he limited his comments to a subset of such workers, including the beneficiary’s position.

The petitioner has shown that the beneficiary’s position meets the criteria from the regulatory definition of a religious occupation. The petitioner has shown that health care, colored by SDA doctrine, is a traditional religious function of the SDA Church, and that the beneficiary’s duties primarily relate to that function. The petitioner’s reliance on treatments such as hydrotherapy that find little acceptance in mainstream secular medicine emphasizes the religious nature of the petitioning entity as well as the beneficiary’s role therein. The SDA Church recognizes the beneficiary’s position as a religious occupation within the denomination.

The petitioner has consistently indicated that there is a significant religious aspect to the beneficiary’s duties. She is not simply a masseuse whose job description includes a token mention of prayer and Bible study. The beneficiary’s duties are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. The petitioner’s position is not primarily administrative or support, nor does it constitute religious study or training for religious work. The AAO stresses that employment at an SDA health facility does not automatically qualify an alien as a religious worker, but the petitioner’s claims and evidence are persuasive in this particular instance.

The director’s denial notice relied on requirements not found in the regulations, and the director did not consider the petitioner’s RFE response before rendering the decision. Examination of those materials, and evidence submitted previously, supports the petitioner’s claims. 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 met that burden. Accordingly, the AAO will withdraw the director’s denial decision and approve the petition.

**ORDER:** The appeal is sustained and the petition is approved.