

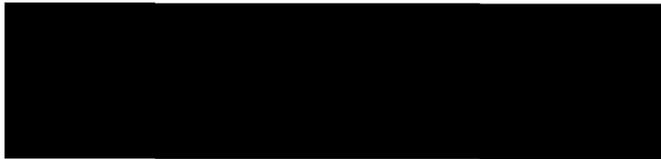
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



C1

DATE: JUN 08 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:

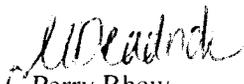


INSTRUCTIONS:

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 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 vice principal of its "Bible-teaching Sunday School." The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition and that there was a valid offer for the beneficiary to work in a position that qualifies as that of a religious occupation.

On certification, counsel asserts that the beneficiary has worked for the petitioning organization since 2000 and volunteered her time with [REDACTED]. 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 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 presented is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

- (i) The alien was still employed as a religious worker;
- (ii) The break did not exceed two years; and
- (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked 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 9, 2006. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

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

*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 [Internal Revenue Service] documentation that the alien received a salary,

such as an IRS Form W-2 [Wage and Tax Statement] 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.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary entered the United States on June 21, 1998 and that her current nonimmigrant status is "intending imm[igrant]." The record reflects that the petitioner filed a previous Form I-360 petition on behalf of the beneficiary on July 20, 2001 (USCIS receipt number [REDACTED]) that was approved on February 26, 2003. The record reflects that at the time, the beneficiary was present in the United States in an R-1 nonimmigrant religious worker status that was valid to July 10, 2003. However, the director subsequently determined that the proffered position (vice principal of Sunday school) did not qualify as that of a religious occupation and revoked approval of that petition on September 15, 2004. The petitioner's October 14, 2004 appeal of that decision was rejected as untimely filed. On January 18, 2005, the director denied the petitioner's motion to reopen and reconsider.

The petitioner submitted documentation of compensation paid to the beneficiary in 2002 and dates prior to that year; however, it submitted no documentation with the instant petition to establish that the beneficiary worked in a qualifying religious occupation or vocation during the qualifying two-year period of January 9, 2004 to January 9, 2006. In a request for evidence (RFE) dated May 3, 2006, the director instructed the petitioner to submit documentation of the beneficiary's qualifying work experience. In its July 14, 2006 response, the petitioner stated that the beneficiary joined its faculty in 1998 when she arrived in the United States, and that she currently serves as vice principal of its Sunday school where she works 40 hours per week and received remuneration of \$1,600 per month. The petitioner submitted a weekly work schedule for the beneficiary as follows:

<u>Weekdays</u>	<u>Description of Duties</u>	<u>Working Hrs</u>
Sunday	Praying, Counseling and Teaching	9:30 to 5:30
Tuesday	Praying, Studying, Meeting with Teachers	12:30 to 6:30

Wednesday	Praying, Counseling, Teaching, Meeting	12:30 to 6:30
Thursday	Praying, Counseling, Teaching, Meeting Studying	12:30 to 6:30
Friday	Praying Studying, Preparing Courses Meeting with Pastor	12:30 to 6:30
Saturday	Praying, Meeting with Teachers and Parents	9:30 to 5:30

The petitioner also submitted copies of IRS Forms W-2 that it issued to the beneficiary in 2004 and 2005, on which it reported it paid the beneficiary wages of \$19,200 in each year. The petitioner further submitted uncertified copies of the State of California Employment Development Form (EDD) Form DE 6, Quarterly Wage and Withholding Report, for quarters ending March 2004 through March 2006, on which it reported it paid the beneficiary \$4,800 during each quarter. The petitioner provided a copy of the beneficiary's employment authorization card which was valid from November 18, 2003 to November 17, 2004. The petitioner submitted no documentation of the beneficiary's authority to work in the United States subsequent to November 2004.

On July 5, 2007, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying the petitioner's claims in the petition. The IO spoke with [REDACTED], the petitioner's pastor and the official who assigned the petition on behalf of the petitioner, who stated that the beneficiary "is not employed by" the petitioning organization as vice principal of its Sunday school; rather, she is employed by an affiliate of the petitioning organization, the [REDACTED] as a teacher. According to information provided to the IO, the [REDACTED] operates a 'Korean' school, providing ESL [English as a second language] tutoring in English, Math, and social studies to approximately 15 Korean-speaking students; the school does not provide religious education."

Based on the results of the compliance review verification visit, the director denied the petition, finding that the beneficiary did not work for the petitioning organization and therefore the petitioner had not extended a qualifying job offer to the beneficiary. On appeal, counsel stated in a March 18, 2008 letter, which was also signed by [REDACTED], that:

While it is true that the two organizations [the petitioner] and [REDACTED] are separately formed, i.e., one is chartered on May 10, 2006 while the other is chartered on March 19, 1999, the two organizations now very much one in [sic] the same. In other words, the [REDACTED] School is now funded by [REDACTED]

It should be noted that there was no intentional misrepresentation by the petitioner, [REDACTED] when he signed the I-360 on behalf of [the petitioning organization], while indicating that the beneficiary worked for the

petitioner as “Vice Principal” of its Sunday School, the latter also known as [REDACTED].

As an ethnic church catering to an ethnic immigrant community, the petitioner considered the church’s Sunday School and the Christian School to be one in [sic] the same.

The truth is that while there are two outstanding nonprofit corporations operating out of the same address . . . the two recently became one financially and structurally in that [REDACTED] is totally subsumed by [REDACTED].

The petitioner submitted a copy of December 8, 1999 advance ruling letter from the IRS advising the [REDACTED] that it had been granted tax exempt status under section 501(c)(3) of the Internal Revenue Code [IRC] of 1986 as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC. The petitioner also submitted a copy of a March 15, 2004 letter to the school confirming the school’s tax-exempt status as a public charity under section 170(b)(1)(A)(vi) of the IRC. The petitioner further submitted a copy of the March 19, 1999 certificate of incorporation for the [REDACTED] from the State of California Secretary of State and a partial copy of a January 11, 2000 letter from the State of California Franchise Tax Board advising the school that it was exempt from state franchise tax as a religious corporation.

The petitioner submitted no documentation to support its claim regarding the relationship between the petitioning organization and the [REDACTED] as being “one financially and structurally.” Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Pursuant to requirements under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), USCIS issued new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified:

All cases pending on the rule’s effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information. 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

In keeping with this requirement, the AAO remanded the petition to the director on December 8, 2008, to give the petitioner an opportunity to meet the new evidentiary requirements. On February 4, 2009, the director, in a Notice of Intent to Deny (NOID), instructed the petitioner to submit

documentation of the beneficiary's qualifying work experience and advised the petitioner that qualifying work experience obtained in the United States must have been authorized under U.S. immigration law. In response, counsel stated that the petitioner had previously provided evidence of the beneficiary's qualifying experience and that the beneficiary was authorized to work in the United States as shown on the Employment Authorization Card. However, the card provided by the petitioner indicates that the beneficiary's authorization to work in the United States expired on November 17, 2004, more than 13 months before the petition was filed.

In an RFE dated June 23, 2009, the director sought additional information regarding [REDACTED] and the beneficiary's duties with both the petitioning organization and the [REDACTED], to include the specific duties performed by the beneficiary at both organizations. The director also instructed the petitioner to provide further details regarding the duties performed by the beneficiary as shown in the weekly schedule.

In response, counsel stated that there were only two paid staff for the petitioner and the [REDACTED] – the pastor and the beneficiary. He further stated that approximately 30 children attended the petitioner's [REDACTED] services on Sunday with a similar number attending the Southbay Christian School from Monday through Saturday. Counsel stated that "there is a specialized community outreach type of job training classes being held for grown-ups." Counsel additionally asserted:

As to the special duties that the beneficiary will be undertaking vs. specific duties of other staff, please be advised that the beneficiary will "assist the Principal in supervising the teaching activities of the Bible teachers of Sunday School and in managing the Sunday School, including but not limited to, selecting the instructional books and helping to formulate the curriculum for the Sunday School." Her work during the weekdays, Tuesday through Saturday, starts with the 30 minutes meeting with principal regarding the day's schedule, followed by the staff meeting with volunteers for one hour. The classroom hours starts [sic] at 3:10 p.m. and ends 6:10 from Tuesday through Friday. (The school also opens on Monday but this is her off-day of the week.) Her work on Saturday involves meeting with teaching volunteers and parents of students in addition to overall preparation for the upcoming Sunday School curriculum. Her work on the following Sundays are more eclectic as she leads the students for Sunday worship services both with main congregation members and also separately just for students in addition to teaching the students for the Sunday School.

Counsel stated that the beneficiary teaches bible to 10 students and the Korean language to 8 to 10 students. The record contains no documentation to support counsel's statements regarding the specifics of the beneficiary's duties. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We note that although the petitioner claims to have an "active" membership of 200

congregants, a claim repeated by counsel, the membership lists it provided contained no more than 78 names.

The director again denied the petition, determining that the petitioner had failed to establish that the beneficiary worked for the petitioning organization or that she worked in a religious occupation for the two years immediately preceding the filing of the petition. On certification, counsel asserts that the beneficiary has worked for the petitioning organization as vice principal. Counsel further argues:

[The beneficiary] has contributed her knowledge in some secular subjects by voluntarily teaching students at the Christian School on a part time basis. This has been a part of her overall missionary endeavor. However, at the same time, [she] has been working full time with pay for the Christian Church as the Vice Principal of Sunday School. This is well documented by [the] W-2s, EDD reports and Form 1040 filed by the beneficiary.

Counsel's argument is inconsistent with other statements in the record. Counsel argues on certification that the beneficiary provides her services to [REDACTED] on a voluntary basis; however, in his March 18, 2008 letter, counsel asserted that the two organizations were one and the same and that the [REDACTED] was, in fact, the petitioner's Sunday school. In outlining the beneficiary's duties, the petitioner did not distinguish between work performed by the beneficiary for the church and work performed at the school. Although the petitioner submitted documentation that it paid the beneficiary, it submitted no documentation to establish that the beneficiary worked for the petitioning organization as it outlined in the weekly schedule. As the director stated, and as confirmed by counsel, and the articles of incorporation, the [REDACTED] is a separate legal entity from the petitioner. The petitioner submitted no documentation to establish that the school is one of its subordinate units or that it was obligated, legally or not, for the school's operation and liabilities. Doubt cast on any aspect of the petitioner's proof may, of course, 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). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Furthermore, the petitioner submitted no documentation to establish that the beneficiary was in a lawful immigration status and authorized to work in the United States throughout the qualifying period. Any unauthorized work performed by the beneficiary in the United States interrupts the continuity of her work experience for the purpose of this visa petition. 8 C.F.R. § 204.5(m)(11)

The director also determined that the petitioner had failed to establish that the beneficiary had been and would be engaged in qualifying religious work. As previously discussed, [REDACTED] advised the IO that the beneficiary worked at [REDACTED] and that the [REDACTED] did not offer religious education. The determination letter from the

IRS advises the school that it was exempt from income tax under section 501(c)(3) of the IRC under section 170(b)(1)(A)(vi) of the IRC, which pertains to publicly-supported organizations as described in section 170(c)(2) of the IRC, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section therefore refers in part to religious organization but also to many types of secular organizations as well.

An organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that the classification under section 170(b)(1)(A)(vi) derives primarily from the organization's religious character rather than from its status as a publicly supported charitable and/or educational institution. The petitioner submitted a partial copy of a January 11, 2000 letter from the State of California Franchise Tax Board advising the school that it was exempt from state franchise tax as a religious corporation. However, it submitted no other documentation, such as that outlined in 8 C.F.R. § 204.5(m)(8)(iii)(B) and (C), to establish the religious nature of the school.

The petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The director further determined that the petitioner had not established that the beneficiary would be engaged in qualifying religious work.

The 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.

As discussed above, the petitioner has failed to provide sufficient documentation to establish that the beneficiary will work for the petitioner. Rather, the evidence indicates that the beneficiary's primary duties will be with [REDACTED]. Also as previously discussed, there is

no evidence that [REDACTED] provides a religious education. Therefore, the petitioner has not established that the duties of the proffered position primarily relate to a traditional religious function and primarily relate to, and clearly involve, inculcating or carrying out the religious creed of its denomination.

Accordingly, the petitioner has failed to establish that the proffered position is a religious occupation as that term is defined by the regulation.

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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 September 8, 2009 is affirmed. The petition is denied.