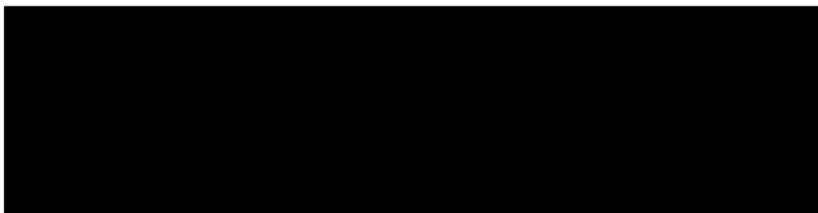


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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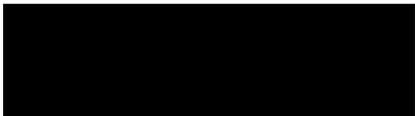
DATE: **JUN 21 2011** Office: CALIFORNIA SERVICE CENTER

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 and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 an outreach ministry coordinator. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

Counsel asserts on appeal that the director erred in determining that the proffered position does not relate to a traditional religious function. Counsel submits a brief 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 issue presented on appeal 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.

The petitioner stated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that “[a]s Outreach Ministry Coordinator, the alien beneficiary’s responsibilities focus on building relationship with the Filipino communities in New Jersey; coordinates the church’s community service activities, retreats and workshops; and develops programs for the proper dissemination of church theology and tradition.” The petitioner submitted no other documentation regarding the proffered position.

In a request for evidence (RFE) dated May 14, 2009, the director instructed the petitioner to:

Provide a **detailed description** of the work to be done, including specific job duties, level of responsibility or supervision, and number of hours per week to be spent performing each duty.

Include a daily and weekly schedule for the proffered position.

List the minimum education, training, and experience necessary to do the job and submit **documentary evidence** to show that the beneficiary has met such requirements. **Further, explain how the duties of the position relate to a traditional religious function.**

Traditional Religious Occupation: Provide evidence that the duties primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination. Provide evidence that the duties are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. [Emphasis in the original.]

In an August 3, 2009 letter submitted in response, the petitioner, through its director, Reverend [REDACTED], stated that as outreach ministry coordinator:

[The beneficiary] performs and will continue to perform the following duties and responsibilities: Building relationship with the Filipino communities in New Jersey; coordinating the Church's community service activities, retreats, and workshops[,] and developing programs for the proper dissemination of Church theology and tradition.

. . .

That the beneficiary's occupation in the Unification Church relates to a traditional religious function since her duties and responsibilities – as enumerated above – are all geared toward the pursuits of the objectives of spreading the religious creed, concepts, and beliefs of the Unification Church.

That a full-time religious worker in the Unification Church forms part of a special, select, and valuable group of people who completely devote their lives to the full-time vocation of religion. They are indispensable to the dispensation of the church's creed, concepts, and beliefs.

The petitioner submitted a schedule of the beneficiary's activities that included "witnessing" (5 hours on Monday, 6 hours on Wednesday, and 6 hours on Friday), counseling (3 hours on Monday), community services (5 hours on Tuesday), evangelical service (3 hours on Tuesday and 4 hours on Thursday), lecture/guest orientation (2 hours on Wednesday), teaching church theology (4 hours on Thursday), divine principle lecture (2 hours on Friday), and Sunday service. Saturday was listed as a day of rest.

In another RFE dated August 22, 2009, the director again instructed the petitioner to provide further evidence to establish that the proffered position qualifies as a religious occupation as that term is defined in the regulation. In response, counsel stated that the information had previously been provided in response to the director's RFE of May 14, 2009. Counsel further stated:

Specifically, in building relationship with the members of the Filipino communities in New Jersey, and developing programs for the proper dissemination of church theology and tradition, the beneficiary discusses and imparts with those individuals the concepts of the Unification Church with the intent of leading them to understand church theology and tradition and embrace church membership.

Further, in coordinating the church's community service activities, the beneficiary organizes prayer meetings, Sunday worship service, Sunday pledge service, and special church events. She also conducts revival meetings, rallies, and community service work such as charitable food distribution to need families.

The record does not contain any documentation to support counsel's statements. 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). The petitioner failed to provide any specifics of the work in the proposed position and how it relates to a traditional religious function. For example, the petitioner stated that the beneficiary's work week consists of 17 hours of "witnessing" but did not explain what that duty entailed. The petitioner did not correlate the requirements of the job with the duties listed in the beneficiary's work schedule. "Building a relationship with the Filipino community" does not necessarily equate to "witnessing."

On appeal, counsel again argues that the beneficiary's "duties required [her] to discuss and impart with individuals the concepts of the Unification Church with the intent of leading them to understand church theology and tradition and embrace church membership." (Emphasis omitted.) Counsel references the petitioner's letter of August 3, 2009 to support his statements; however [REDACTED] letter provides only general statements regarding the role of full-time workers within the church and that the duties of the proffered position involves "spreading the religious creed, concepts, and beliefs of the Unification Church." 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 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has not submitted sufficient documentation to establish that the duties of the proffered position primarily relate to a traditional religious function, primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the Unification Church, and therefore qualifies as that of a religious occupation as defined by the regulation.

Beyond the decision of the director, the petitioner has not 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 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 March 4, 2009. 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 documentation that the alien received a salary, such as an IRS Form W-2 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.

As discussed above, the petitioner has failed to establish that the proffered position, in which it states that the beneficiary has worked since July 2004, qualifies as a religious occupation.

Therefore, it has not established that the beneficiary worked in qualifying religious work for the two years immediately preceding the filing of the petition.

Additionally, the petitioner stated in its August 3, 2009 letter:

That while the beneficiary has been a full-time religious worker since 2004 to the present time, she was not paid on a payroll basis from 2004 through April 2008. However, during that period, she was provided by the Church with a modest but adequate financial support, which covered her living space, food, clothing, medical care, and traveling expenses, as needed. The beneficiary has been on payroll beginning May 2008 to the present.

The petitioner submitted copies of petty cash receipts annotated as "food budget" for each month in 2007 apparently acknowledged as received by the beneficiary. The petitioner, however, failed to submit documentation of other claimed compensation provided to the beneficiary during this period in the form of housing, clothing or any other non-salaried compensation, as required by the above-cited regulation. The petitioner also submitted copies of earnings statements indicating that it paid the beneficiary \$600 per month beginning in May 2008 and \$1,200 per month beginning in January 2009. The earnings statements reflect allowances for rent and medical care. However, as noted, the petitioner submitted no similar documentation for 2007 through April 2008.

The petitioner has therefore 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.

ORDER: The appeal is dismissed.