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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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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 09 2011

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:  
[REDACTED]

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a church of the Seventh-day Adventist (SDA) denomination. 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 religious studies instructor and coordinator. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition, or that the position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel, copies of record materials, and statements relating to a July 2007 inspection of the petitioner's offices.

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 petitioner filed the Form I-360 petition on March 5, 2009. The first issue 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 USCIS regulation at 8 C.F.R. § 204.5(m)(7)(ix) requires the intending employer to attest that the beneficiary is qualified for the position offered. The petitioner’s initial submission included an unsigned letter attributed to [REDACTED] (the petitioner’s chief executive officer) and [REDACTED] (a church elder). This letter included a lengthy description of the beneficiary’s position. Excerpts follow:

His primary responsibility . . . is to promote understanding of Seventh-day Adventists’ denominational beliefs and the precepts of Christianity mainly among the youth of our church. . . .

At our church he has been entirely responsible for organizing and leading baptismal classes and youth classes (Bible studies). . . . [and] special camping excursions, church gatherings, evangelizing, and events. [The beneficiary] also arranges and coordinates member visitations. He also arranges and coordinates for [REDACTED]/Family worship to commence the Sabbath, and mid-week prayer meetings. . . .

Although through regular attendance, completing baptism and Bible studies, one can become well-versed in the Seventh-day Adventist beliefs, it is indeed possible to further educate oneself. [The beneficiary] has indeed engaged in such further training, education and experience.

[The beneficiary] has completed courses in religious studies. On August 5, 1995, he obtained a certificate of membership in Ministerial Seminar, a certificate of completion in Revelation Bible Seminar on October 9-22, 2001, and a correspondence course certificate in Bible Correspondence on August 18, 2001.

. . . It is important to note that although [the beneficiary] does not have a college degree in religious studies . . . [h]is knowledge comes from actual experience, regular attendance, coupled with both formal and informal studies in Christianity and in the Seventh-day Adventist faith.

. . . For the record, we do not require any formal education for the position held by [the beneficiary].

The petitioner submitted copies of letters and certificates from SDA churches in the Philippines, showing that the beneficiary had served as a literature evangelist from 1985 to 1995, youth director from 1997 to 1999, and church elder from 1999 to 2001. These materials did not indicate that the beneficiary was a compensated employee rather than a volunteer. The petitioner also submitted two letters certifying that the beneficiary “was employed by [redacted] as [a] Technology & Livelihood Education Teacher from June 1994 to March 2001,” a period that overlaps the beneficiary’s previous church positions. The beneficiary taught mostly secular subjects at the academy, but also taught “Bible subject” and was responsible for “all religious programs and activities of the school.”

Copies of certificates reflect religious coursework that the beneficiary completed between 1985 and 2001, with an additional course in 2008.

On May 21, 2009, the director issued a notice of intent to deny the petition, based in part on the assertion that the beneficiary “does not have any record of formal training.” In response, [redacted] noted that the beneficiary had taken numerous religious courses, although they did not lead to an academic degree, and that the beneficiary had several years of experience in various positions within the SDA denomination. [redacted] argued that many religious positions have no formal training or educational requirements, and that “the requisite knowledge . . . may be gained by any number of avenues.”

The director denied the petition on July 10, 2009, in part because “the beneficiary has no specified prescribed religious training or theological education which would qualify him over and above any other member/volunteer in the congregation. Moreover, the petitioner has failed to demonstrate that the work proffered to the beneficiary relates to a traditional religious function within the organization.” The director also noted that the petitioner must establish that the position “is traditionally a permanent, full-time, salaried occupation within the denomination.”

On appeal, counsel argues that the director has assumed that the beneficiary’s position requires specific training or education, but did not cite “any authoritative source” to “state . . . the precise level of religious training or theological education” the position should require. We agree with this objection by counsel. If the director is to conclude that the beneficiary lacks the necessary training, then the director must be able to identify an authoritative source to specify what that training is, and show how the training is deficient. It cannot suffice for the director simply to assume that a given position must

require some unspecified level of advanced training, and then arbitrarily conclude that the beneficiary's own training falls short of that level.

The available evidence and information support the conclusion that the beneficiary's work relates to the traditional religious function of religious education, a function that exists only to perpetuate the faith by inculcating the denomination's religious beliefs. The petitioner must also, however, show that the SDA denomination recognizes the beneficiary's position as a religious occupation. The petitioner has not shown this to be the case.

The unsigned letter attributed to [REDACTED] and [REDACTED] included the following passage:

Teaching or furthering congregation members in their exploration of Christianity and the Seventh-day Adventist beliefs is an important function of what any church seeks to accomplish. Employing an individual has in our opinion, been mutually beneficial to [the beneficiary] and our church. Our church benefits in that the leadership and congregation members can rest assured, knowing that a specific qualified individual is empowered with the task of handling many of the church matters. [The beneficiary] also benefits in that he is being compensated and is also pursuing his life's calling of promoting the Seventh-day Adventist beliefs.

The quoted passage is significant because it distinguishes between "being compensated" and "promoting the Seventh-day Adventist beliefs," and because it does not take for granted that the beneficiary's duties are self-evidently a paid occupation. Rather, the petitioner cites practical reasons for "[e]mploying an individual" as opposed to (by implication) relying on one or more unpaid volunteers. In this respect, it is highly significant that the petitioner has no other paid employees. [REDACTED] for instance, supports himself by working as a city government employee with a side business preparing income tax returns.

This takes us back to the observation that, while the beneficiary served as a youth director and church elder between 1997 and 2001, there is no evidence that the beneficiary received any compensation in those positions. During those same years, the beneficiary "was employed by [REDACTED] [REDACTED]'. The petitioner has not shown, or even specifically claimed, that the beneficiary's intended position is typically a paid occupation, full-time or otherwise, within the SDA denomination.

While some of the director's specific points have more merit than others, we concur with the overall finding that the petitioner has not shown the beneficiary's intended position to be a qualifying religious occupation (as opposed to a traditionally volunteer activity that the petitioner has portrayed as an occupation for immigration purposes).

The director also found that the petitioner lacks the experience required by the statute and regulations. The 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. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) states that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner submitted materials showing the beneficiary entered the United States on June 16, 2002 as a B-2 nonimmigrant visitor to participate in the "Maraguay Sidikit/Choir Concert Tour" in June and July 2002. The beneficiary's B-2 nonimmigrant status was valid through December 15, 2002. The beneficiary later held R-1 nonimmigrant religious worker status from October 26, 2003 to October 25, 2008 (with extensions effective on January 3, 2005 and January 3, 2007). The beneficiary qualified for no further extensions, because section 101(a)(15)(R)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(R)(ii), limits the admission of an R-1 nonimmigrant to five years. The petitioner, on the Form I-360 petition, acknowledged that the beneficiary's R-1 nonimmigrant status expired on October 25, 2008, more than four months before the petition's filing date. The petitioner did not submit any evidence to show that the beneficiary held any valid nonimmigrant status, or any USCIS employment authorization, during the last 19 weeks of the qualifying period between late October 2008 and early March 2009.

The director, in the denial notice, quoted the full regulation at 8 C.F.R. § 204.5(m)(4) and stated that the petitioner must show that "the beneficiary has been lawfully employed as a religious worker for at least the two-year period immediately preceding the filing of the petition." Counsel, on appeal, has asserted that "the beneficiary has indeed been employed for more than two years," omitting the word "lawfully" from the director's decision. The petitioner has previously acknowledged that the beneficiary's nonimmigrant status expired well before the filing date, and that the beneficiary worked in the United States without authorization. This is, by itself, a facially disqualifying circumstance that warrants denial of the petition.

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 not met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.