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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**



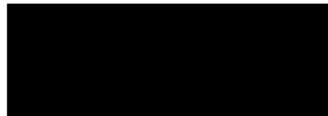
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 09 2011

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:



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 (director) denied the employment-based immigrant visa petition and it is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and remand the petition for further action and consideration.

The petitioner is an Orthodox Jewish congregation. 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 instructor. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation and that the beneficiary was qualified for the proffered position.

On appeal, counsel asserts that the director's decision is "clearly and unequivocally contrary to the facts contained in [the] application, documentation and responses provide[d]." Counsel submits a letter and copies of previously submitted 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 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 September 22, 2005 letter submitted in support of the petition, the petitioner stated:

Our institution is a religious [redacted] designed to educate Jewish brethren in various aspects of Jewish religious studies and to obtain Ordination as teachers and rabbis of the Jewish faith. Our program comprises of [sic] a full religious Judaic/Hebrew educational programs and various lectures and seminars to provide inspiration of our rich Jewish heritage.

The petitioner indicated that the beneficiary was a rabbi and that he would teach:

- (a) Daily Talmud lectures and studies
- (b) Religious laws and customs related to the Bible studies
- (c) Jewish ethics, culture and history
- (d) Provide study groups and symposiums

In a request for evidence (RFE) dated January 9, 2006, the Director, Vermont Service Center, instructed the petitioner to submit documentation to establish that the proffered position qualifies as that of a religious occupation, including a detailed listing and description of the proposed duties and the number of hours devoted to each of the proposed duties. The petitioner stated in its April 4, 2006 response:

[The beneficiary's] duties at our organization will involve teaching Talmud on a highly advanced level to students; lectures on Jewish Ethics; Bible studies and various other advanced lectures on Talmudic studies. Most importantly, he would conduct group meetings and counseling to the young students to rehabilitate their commitment to their Jewish roots. [The beneficiary's] primary goal and duty was

to reach out to our young Jewish children that have strayed from their beliefs and bring them back to the Jewish fold.

His position pursuant to his status will be a full-time position and his schedule will be as follows:

- (a) From Monday through Friday he would be present in the various locations from 9:00 a.m. through lunch time, where he would perform morning prayer services and give lectures, learning and study programs on the Talmud and various other subjects.
- (b) In the afternoon from 1:00 p.m. – 4:00 p.m. he would be available to meet with members of the community for counseling, discuss and provide answers to Jewish legal questions, and prepare for lectures.
- (c) On the Sabbath, he would attend and perform prayer services on Friday evening and on Saturday morning, afternoon and evening. He further gives several sermons and lectures during the course of the Sabbath.
- (d) On Jewish holidays he would attend and perform prayer services, reading from the Torah, and provide lectures on how to properly celebrate the holidays, provide pre-holiday classes to educate the congregants about the holidays.
- (e) Attend all public functions of the synagogue and several select functions of our organization, to wit: attend funerals, conduct bar mitzvahs and weddings, etc.

The petitioner also submitted a copy of a March 28, 2006 letter from [REDACTED] which stated that the beneficiary served as a full-time instructor with that organization.

On August 19, 2008, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying the petitioner's claims in its petition. The IO reported that the beneficiary's "duties include teaching, which he does four times a week, and counseling. His duties as described [are] consistent with that stated in the job letter."

In an RFE dated March 25, 2009, the director stated, "During the site check it was revealed that the beneficiary was scheduled to work Sunday through Thursday. This information is totally different from the schedule given in the initial filing. Please explain." The director also instructed the petitioner to submit additional information about the proffered position:

What is the beneficiary's job title? Provide a **detailed description** of the work to be done, including specific job duties, level of responsibility/supervision, and

number of hours per week to be spent performing each day. 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. [Emphasis in the original.]

In response, the petitioner indicated in its attestation that the proffered position was that of rabbi/inspirational speaker. However, the duties as outlined in counsel's May 5, 2009 letter are the same as those indicated in the petitioner's April 4, 2006 letter. The petitioner also submitted a copy of a January 20, 2005 letter from the dean of the Yeshiva Chatam Sofer in Jerusalem, Israel in which he certified that the beneficiary had worked with that organization as a religious teacher for over 20 years.

In denying the petition, the director determined that the petitioner failed to submit the detailed job description as requested by the director and that the description submitted "is vague and does not provide a detailed description of the beneficiary's duties and the number of hours the beneficiary will work per week." The director further determined that the petitioner has not established that the position is recognized as a religious occupation related to a traditional function in the denomination.

On appeal, counsel asserts that the petitioner has provided all of the information requested by USCIS and that the director's decision is contrary to the documentation provided. Counsel resubmits the petitioner's letter that references the specific documentation submitted in response to the RFE.

We find that the petitioner has submitted sufficient documentation to establish that the proffered position is recognized as a religious occupation within its denomination and that the duties of the position primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. Further, we do not find any inconsistencies between the duties of the proposed position and the information reported by the IO of his onsite inspection.

We find that the petitioner has submitted sufficient documentation to establish that the proffered position qualifies as that of a religious occupation within the meaning of the regulation and we withdraw the director's finding to the contrary.

The second issue is whether the petitioner has established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 204.5(m)(5) defines religious worker as an individual who is qualified for the religious occupation or vocation.

In response to the January 9, 2006 RFE, the petitioner provided a copy of a certificate from the [REDACTED] in Jerusalem in which he certified that the beneficiary had been tested by the rabbi and was "ordained and qualified to answer to all halachic, kasruth issues, questions." The petitioner also provide a copy of an October 11, 1999 letter from [REDACTED]

[REDACTED] which certified that the beneficiary "studied in our Yeshiva the Halachot and Laws with regards to proper observance and sanctification of the Holy Holidays and all laws pertaining to kosher and non-kosher items and he is qualified to judge and give answers to such intricate issues." Additionally, as discussed previously, the petitioner submitted a letter from the [REDACTED] certifying that the beneficiary had worked as a religious teacher with that organization for over 20 years.

We find that the petitioner has submitted sufficient documentation to establish that the beneficiary is qualified for the proffered position and we withdraw the director's decision to the contrary.

Nonetheless, the petition cannot be approved as the record now stands. The record does not sufficiently establish 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 December 1, 2005. Accordingly, the petitioner must establish that the beneficiary had been 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.

The petitioner provided an uncertified copy of the beneficiary's unsigned and undated IRS Form 1040, U.S. Individual Income Tax Return for 2004, on which he reported \$6,000 in self-employment income. The March 2006 letter from [REDACTED] indicated that the beneficiary had worked for that organization since November 2003. However, the petitioner submitted no other documentation, as outlined in the above-cited regulation, to establish that the beneficiary worked in a religious occupation during the qualifying two-year period.

Accordingly, the matter is remanded to the director to address the issue of the beneficiary's qualifying work experience.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.