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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



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, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 its children's ministry director. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel asserts that the "law and regulations do not require that 'all of the duties' be not primarily secular in nature" and that "[r]equiring the position to be 'traditionally a permanent, salaried position within the denomination' is inconsistent with controlling regulation." 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 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 May 21, 2009 letter submitted in support of the petition, the petitioner stated that in the proffered position, the beneficiary would work 42 hours per week and would be paid wages of \$11.00 per hour, “a monthly non-taxed stipend of \$300,” reimbursement of his gasoline expenses and that he would be provided with “non-taxed board and lodging” valued at \$1,200 per month. The petitioner further stated that in addition to his work as the children’s ministry director, the beneficiary would serve as a religious instructor in its dayschool.

The petitioner submitted a job description for the proffered position, outlining the duties of the position as follows:

1. Be an active, faithful member of [the petitioning organization], including participation in congregational meetings, attendance at a regular fellowship group, praying for and contributing to the financial needs of the church.
2. Oversee the Wednesday evening and Sunday morning children’s Bible classes, including scheduling of workers and selection of curriculum.
3. Recruit, help train, support, motivate, and encourage qualified workers for the Children’s Ministry.
4. Submit to the Senior Pastor a monthly schedule of teachers, teacher assistants, and subject matter for each of the Wednesday and Sunday classes.
5. Attend at least one continuing education or training event annually for the purpose of development as Children’s Ministry Director.

6. Prepare and submit by September 15<sup>th</sup> the Children's Ministry goals for the following calendar year (January through December) and prepare the plans for reaching those goals. These plans are to include Religious Instruction curriculum at [REDACTED], and other special events.
7. Based on item 6 above, prepare and submit by September 15th a proposed Children's Ministry budget for the following calendar year's overall ministry budget.
8. Meet on a regular basis with the Senior Pastor to discuss the development of and concerns about Children's Ministry, and for the purpose of prayer and mutual encouragement.
9. Carry out other tasks assigned by the Senior Pastor such as attendance at special . . . leadership or congregational meetings, Elders meeting, etc.
10. Keep parents informed of the Children's Ministry's goals and plans, and solicit constructive feedback from parents that will contribute to the further growth of the Children's Ministry.
11. Participate in a periodic review with the Senior Pastor of the status and development of the Children's Ministry, of the Children's Ministry Director's ministry performance, and related concerns.
12. Serve as [REDACTED], performing the following duties and responsibilities:
  - a) Assist the [REDACTED] in leadership, supervisory, and administrative skills to manage the preschool so as to promote the spiritual, physical, social, and cognitive development of each child,
  - b) Lead the daily morning prayer and organize a weekly Friday chapel for the preschoolers.
  - c) Help children memorize Bible verses in a creative way.
  - d) Assist the teachers in providing creative tool[s] for teaching Christian values, demonstrate Christian maturity in attitude, actions and speech, showing a consistent walk with Jesus Christ.

In a July 30, 2009 request for evidence (RFE), the director sought additional documentation from the petitioner to establish that the proffered position was a traditional religious occupation within its denomination. The director instructed the petitioner to:

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.

In its September 2, 2009 response, the petitioner stated that the position of children's ministry director was first established in 1981 and held by a volunteer until becoming a compensated position in 1990. The petitioner further stated that in 1999, the position was held by the pastor's wife on a volunteer basis but with the increase in the number of children in the church and the surrounding community, the church needed a full-time director.

The petitioner submitted an August 27, 2009 letter from [REDACTED], the executive director of the [REDACTED] of which the petitioner is a member. [REDACTED] stated, "The position of Children's Ministry Director is a recognized position in many of our association churches, and Children's Ministry is a traditional religious function." Additionally, the petitioner stated:

[The beneficiary] works full-time for the children's church, Sunday school and outreach programs. He works closely along with the Preschool Director in teaching the preschoolers about the Word of God. Our preschool is considered as an important outreach arm of our church as they reach out not only to the preschoolers, but also to their families.

In denying the petition, the director stated that the duties outlined in the position description "do not illustrate that the beneficiary will be in charge of teaching religious instruction to the children." The director further stated that to constitute a religious occupation, "the duties of the position must be directly related to the religious creed of the denomination, defined and recognized by the governing body of the denomination, and is traditionally a permanent, full-time, salaried occupation within the denomination." The director determined that the record "does not demonstrate that the proposed duties of the position are sufficiently specialized in a theological doctrine so as to constitute a qualifying religious occupation."

We note that the definition of religious worker is specifically set forth in the regulation. The director's interpretation of what constitutes a religious occupation goes beyond the requirements of the regulations, including requiring that the duties of the position require specialization in a theological doctrine.

On appeal, counsel argues that the director "willfully disregarded the evidence, decided without explanation that the evidence was not authoritative, or egregiously distorted the evidence." However, counsel relies on an outdated provision of the regulation governing immigrant religious workers, as well as cases that arose under the outdated regulation, including *Camphill Soltane v. DOJ*, 381 F3d 143 (3d Cir. 2004) and *Perez v. Ashcroft*, 236 F. Supp.2d 899 (N.D. Ill, 2002).

Nonetheless, the petitioner has submitted sufficient documentation to establish that the proffered position is a religious occupation within the meaning of the regulation. The petitioner submitted

a letter from the director of its church association confirming that the position is recognized within the denomination. According to the position description, the duties of the position include overseeing the children's bible classes, including setting the curriculum, training workers, and developing goals for the ministry. We therefore withdraw the director's decision.

Nonetheless, the petition cannot be approved as the record now stands. The petitioner has submitted insufficient documentation to establish how it intends to compensate the beneficiary. The petitioner stated that the beneficiary's compensation package would include wages of \$11.00 per hour, which was an increase over his current hourly wage, a \$300 monthly tax-free stipend, and tax-free housing valued at \$1,200 per month.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner submitted copies of IRS Form W-2, Wage and Tax Statement, that it issued to the beneficiary in 2005 through 2008. As the Forms W-2 were based on the beneficiary's old rate of pay, they do not reflect that the petitioner paid the beneficiary the proffered wage in the past. The petitioner also submitted a copy of an IRS Form 1099-MISC, Miscellaneous Income, showing that in 2008, it paid the beneficiary \$3,300 in nonemployee income. The record does not indicate the purpose of these funds. The petitioner further submitted a document indicating that it paid the beneficiary \$300 from the "general fund expenses" in January and April 2009. The petitioner submitted no documentation to establish that it paid the beneficiary \$300 per month in a tax-free stipend or provided him with housing valued at \$1,200.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(12) provides:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may

include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record is remanded to the director to address the issue of how the petitioner intends to compensate the beneficiary and to determine if an inspection or other compliance review is appropriate in the instant case.

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.