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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:



Office: CALIFORNIA SERVICE CENTER

Date: **MAR 23 2011**

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 minister of media/outreach. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

The petitioner submits no additional documentation on certification.

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 December 4, 2006 letter submitted in support of the petition, the petitioner, through its senior pastor, [REDACTED], stated:

The specific duties assigned to this position include: Media outreach to the African community; composing or editing promotional script to meet management or other promotional requirements, as well as, special programs aimed at building community relations.

[The beneficiary] will also perform other spiritual functions associated with Christian beliefs, and equipping new African believers as they seek service opportunities in the Ministry.

The petitioner provided the following work schedule for the beneficiary:

DAY/TIME	DUTIES/TASKS
MONDAY (11 AM-8 PM)	Follow-up with visitors to the Church and also praying with members
TUESDAY (11 AM-8PM)	Counseling; Member Meetings
WEDNESDAY (5PM-9PM)	Participate in Mid-Week Service/bible study, Ministry planning and preparation[]
THURSDAY (4 PM-8PM)	Counseling; Participate in Mid-Week Service; Ministry planning and preparation

FRIDAY	(11 PM-5AM)	Church Council meeting, Night prayer vigil
SATURDAY	(6PM-8PM)	Evangelism; Service preparation
SUNDAY	(8A.M- 4:00 PM)	Church Services, Teaches Bible Study, Coordinate departmental meetings.

The duties as outlined above did not indicate any duties that may have been associated with the proffered position of minister of media/outreach. In a November 7, 2007 request for evidence (RFE), the director sought additional information about the proffered position, instructing the petitioner to:

Provide a **detailed description** of the work to be done, including specific job titles, level of responsibility/supervision, and number of hours per week to be spent performing each duty, and how the beneficiary will be paid for services. 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. [Emphasis in original.]

In her letter accompanying the petitioner's response, counsel stated:

[A]s an ordained Minister of the Church, [the beneficiary] attends to the spiritual needs of our every growing African congregation. His duties in this capacity may be described as [REDACTED]. In this capacity he performs all traditional religious duties including but not limited to conducting Services in African language, counseling members and providing the spiritual support needed by this community.

The petitioner provided a job description for the position of [REDACTED] as follows:

JOB SUMMARY:

[REDACTED] plans and coordinates various aspects of media promotions, working with the Senior Associate Pastor of [REDACTED] and other broadcast staff by performing the following duties. As [REDACTED] you are responsible for establishing and executing all outreach events geared primarily to this population. Also this position is responsible for the selection and setup of all audio/visual equipment; including

projectors, screens, videos monitors, broadcast cameras and related audio equipment.

ESSENTIAL JOB FUNCTIONS

- Composes or edits promotional script to meet management or other promotional requirements.
- Coordinates various aspects of promotion production such as script, talent, music, camera, graphics, and video.
- Coordinate outreaches geared toward increasing attendance of [REDACTED]
- Reviews productions to ensure objectives are attained in all departments.
- Views taped programs to select scenes to be used for promotional purposes.
- Responsible for website design and updates.
- Ensures promotions conform to broadcast standards.
- Oversee and manage A/V inventory.
- Instruct workers in operations and maintenance of A/V equipment.
- Ability to calibrate audio/video equipment.
- Ability to provide media related technical support for the internal departments as needed.
- Ability to organize, prioritize, and manage time effectively to accomplish goals.

OTHER JOB FUNCTIONS:

- Ability to perform duties of other related occupations depending upon specific production needs of the individual airwave or closed circuit station where workers must be able to set up and operate equipment.
- Ability to pull feeds of cable that are inefficient and provide cable that produces quality signals for various televisions.

- Ability to locate cable routes, projection rooms, and cable bases for the entire organization.
- Knowledge of sound systems and their functions.
- Knowledge of projectors, overhead, and screens.
- Knowledge of camera options.
- Knowledge of various cables including but not limited to Coaxial VNC (connection), and Neutric.
- Skill in testing cable to determine repair needs.
- Skill in performing preventive equipment maintenance.
- Ability to operate audio/visual equipment.
- Ability to operate different camera options.
- Ability to establish and maintain effective relationships with co-workers and supervisors.
- Ability to set up and control television production equipment such as cameras, lights, microphones booms, and recording equipment, in studio and at locations outside of studio, to record or transmit broadcasts.
- Ability to perform preventive and minor equipment maintenance.
- Ability to maintain logs to record equipment usage and locations of the equipment.
- Ability to perform a variety of physical skills including but not limited to seeing, walking, sitting, standing, kneeling, stooping, crouching, and kneeling.
- Ability to operate a variety of office equipment including but not limited to personal [sic]

The petitioner listed the qualifying education and experience as:

Bachelors Degree, or higher from an accredited University in Television Broadcast or any related field of study, accompanied with 5 years experience in production, broadcasting, photography and outreach.

The petitioner also provided a December 18, 2007 memo from [REDACTED] outlining the duties expected of the beneficiary in the proffered position. The duties include preparing announcements, developing market ideas using clips of [REDACTED] video taping [REDACTED] for playback on the petitioner's website, photographing "every advertised event" at the petitioner's organization, and designing graphics "for all series" taught by [REDACTED]. The memo also states that the beneficiary would continue his pastoral duties:

You are to follow up with the new African members and put them through what is required to be a member of the church. All new visitors are to be encouraged to become members.

You are required to call, pray and visit the sick or depressed. Prepare and deliver sermons for the African fellowship on Saturdays.

Prayer and counseling with other members of the church as directed by the senior pastor.

You are also required to represent the senior pastor at occasions when he may be unable to attend.

The director determined that the duties of the proffered position were primarily secular in nature and do not relate to a traditional religious function.

On appeal, counsel asserted that the beneficiary is an ordained minister and performs all religious duties including conducting services, providing spiritual support and other sacerdotal duties such as conducting weddings. Counsel further asserted that the work schedule "properly outlined [the beneficiary's] pastoral duties." However, as previously discussed, the schedule provided by the petitioner did not include any of the many duties identified in the job description for [REDACTED]. The petitioner submitted no schedule for the beneficiary that included the duties listed for the proffered position.

In response to the director's February 4, 2009 Notice of Intent to Deny (NOID) the petition, issued following the AAO's remand, counsel stated:

The duties of this position are directly related to the religious creed of [the petitioning organization], the position is defined and recognized by the governing body of [the petitioner], it is a traditionally permanent, full-time, salaried occupation within [the petitioning organization]. The beneficiary's duties are inherently traditional and hence it cannot be said to be volunteer service.

The proffered position is directly connected with Evangelism, production and web publication of our materials. This beneficiary is responsible for creating and producing the contents of the media publications.

Furthermore, it appears that the Director is overlooking the other functions of the beneficiaries [sic] work beyond his technical functions, which are incidental logistical duties that are simply unavoidable.

However, the record does not support counsel's assertions. The petitioner submitted no documentation to establish that the position is defined and recognized by its governing body. Further, it submitted no documentation that it has employed another individual in a similar capacity as the beneficiary or that the position exists in other organizations within its denomination. Additionally, a review of the duties of the position indicate that while the beneficiary would be responsible for the "promotional script," the record does not establish that the duties of the position primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of its denomination. As previously discussed, the petitioner submitted no work schedule for the beneficiary that included the duties outlined in the job description.

The petitioner submitted documentation to establish that the beneficiary is an ordained minister within its denomination. However, the proffered position is that of [REDACTED]. [REDACTED] The requirements of the proffered position include a bachelor's degree in television broadcasting or a similar field and five years of experience in "production, broadcasting, photography and outreach." The requirements do not include any requirement for ordination or any theological training or experience. While the beneficiary may perform other work as a minister, the proffered position does not include such duties.

Accordingly, the petitioner has failed to establish that the proffered position of minister of media/outreach is a religious occupation as defined by the regulation.

The AAO will affirm the certified 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 June 30, 2009 is affirmed. The petition is denied.