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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: **MAY 16 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is the United States affiliate of SIM, a Christian missionary organization. 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 missionary. The director determined that the petitioner had not submitted requested documentation, or shown that the beneficiary's intended position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel and numerous background documents.

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 October 1, 2008. Eric Ernst, the petitioner's director of discipleship and personnel, signed Part 9, "Signature," of the Form I-360 on the petitioner's behalf. That section of the petition form included this passage: "I authorize the release of any information . . . from the petitioning organization's records, that the U.S. Citizenship and Immigration Service [*sic*] needs to determine eligibility for the benefit being sought."

While the petition was pending, U.S. Citizenship and Immigration Services (USCIS) published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). The revised regulation at 8 C.F.R. § 204.5(m)(7)(iii) requires the petitioner to attest to "[t]he number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion."

On May 9, 2009, the director instructed the petitioner to submit evidence and information regarding the petitioner, the beneficiary, and the job offer. One thing the director requested was "a list of the current number of paid individuals within the petitioner's denomination or religious organization including full name(s), position title(s) and description(s), amount of salary, and date(s) of hire." In response, the petitioner stated that it "has 210 employees in the US and 444 employees overseas. Because of privacy reasons and due to the sensitiveness of such information, [the petitioner] is not allowed to give out that information. However, we have attached the most recent financial statements for your review." The attached audited financial statement for 2006 and 2007 did not specify how much the petitioner paid in salaries during those years.

The director denied the petition on October 1, 2009, in part because the petitioner did not provide the requested employee list. The director cited the USCIS regulation at 8 C.F.R. § 103.2(b)(14), which states in part that failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition.

On appeal, Mr. ██████ states: "The sole reason Petitioner did not provide personal employee information as requested by the USCIS is that it is against the organization's policy to divulge such information to outside entities."

As explained above, the USCIS regulation at 8 C.F.R. § 204.5(m)(7)(iii) gives the director discretion to request a list of employees and information about their positions. When Mr. ██████ signed the petition as an official of the petitioning entity, he consented to the release of such records as USCIS may require for the adjudication of the petition. The petitioner refused to honor this agreement, and the director correctly cited the regulation at 8 C.F.R. § 103.2(b)(14), quoted above. It is within the director's discretion whether or not to request detailed employee information; it is not within the petitioner's discretion whether or not to comply with that request. In the absence of any factual dispute on this matter, the AAO must agree with the director's finding that the petitioner failed to submit material information on request.

The second issue under consideration is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The 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 a letter accompanying the petition, Mr. [REDACTED] described the beneficiary’s intended position:

[The beneficiary’s] duties will include traveling throughout the United States to churches associated with SIM for the purpose of educating Christians about SIM’s work in Africa. He will serve as a resource to [REDACTED] which minister to African immigrants in the United States. He will share his experiences with other SIM missionaries who serve African nationals. He will be involved in evangelistic meetings, teaching Bible classes and will represent SIM before numerous churches throughout the United States. He will also be responsible for capacity building responsibilities within [the petitioner] related churches and para-church organizations in several states across the country through conferences, seminars and church-group presentations. These efforts seek to bring missions awareness in a more meaningful and practical way to various churches. It also includes the task of recruiting potential missionaries for both short and long term overseas assignments. And leading teams overseas to be involved in missionary endeavors ranging from children’s/youth work to theological education and leadership development as necessary.

In the May 2009 notice, the director instructed the petitioner to “[p]rovide evidence that the duties primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination.” In response, the petitioner quoted the pre-2008 regulation at 8 C.F.R. § 214.2(r)(2), which included missionaries in a list of examples of qualifying religious occupations. The cited regulation pertained to nonimmigrant religious workers, but a parallel regulation at 8 C.F.R. § 204.5(m)(2) included a similar definition applicable to special immigrant religious worker petitions.

In response to the notice, the petitioner repeated the description included with the initial filing, adding the following details:

Providing Leadership training; Providing studies written in the national languages for study groups throughout Malawi for adults, youth and children. More specifically, Beneficiary is responsible for the following daily duties:

- Research work (almost daily) at Denver Seminary as part of the mission's life-long learning policy. This is for needed task of training pastors and religious workers;
- Daily correspondence by emails in response to inquiries about the work of SIM in Malawi, Africa;
- Preparations for talks and presentations in the churches and small groups related to the work of SIM in the Denver area;
- Sermon preparation and delivery on most Sundays in some churches related to SIM;
- Prepare and attend weekly missions (global Christian work) meetings for business and prayers;
- Preparations and teaching Adult Sunday classes as assigned by the Missions Pastor at a SIM related church;
- Prepare and attend . . . monthly missions business and prayer meetings;
- Write and distribute a monthly newsletter to individuals, organizations and churches in the US and beyond that support the work of SIM . . . ;
- Travel to churches that support the work of SIM in different parts of the state of Colorado and others e.g. Nebraska and Wisconsin,
- Attend capacity building seminars/conferences at [the petitioner's] headquarters as and when necessary.

In the denial notice, the director quoted the above descriptions in full, but concluded:

The beneficiary's duties do not relate to a traditional religious function. Though the job title "missionary" is used in the job offer, the duties performed by the beneficiary as described are secular. In this instance, the duties of the occupation do not have religious significance that embodies the tenets of the religious denomination.

On appeal, the petitioner argues: "Beneficiary's position and duties clearly relate to a traditional religious function as defined by the regulations," because some of those duties are clearly religious (such as teaching Bible classes), and others are in furtherance of the petitioner's religious goal of spreading the gospel (such as recruiting missionaries and building relationships with host churches).

Upon consideration, the AAO agrees with the petitioner that the position is primarily religious in nature. It is true that a petitioner cannot invest a secular job with religious significance simply by

applying a religious title, such as “missionary” or “minister,” but the petitioner does not appear to have done so in this instance. The petitioner is not simply an administrative worker whose duties focus on logistical issues such as finances, travel itineraries, or office paperwork. Rather, the beneficiary’s administrative functions appear to be incidental to the inherently religious work of propagating the petitioner’s religious message and building relationships with houses of worship.

The USCIS regulation at 8 C.F.R. § 103.3(a)(1)(i) requires the director to explain, in writing, the specific reasons for the denial. The director did not do so in this instance. Instead, the director simply declared without explanation or elaboration that the beneficiary’s occupation is not religious. This summary finding appears to be contrary to the available evidence, and cannot stand. Nevertheless, the petition shall remain denied, because of the petitioner’s failure to submit requested evidence as explained above.

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.