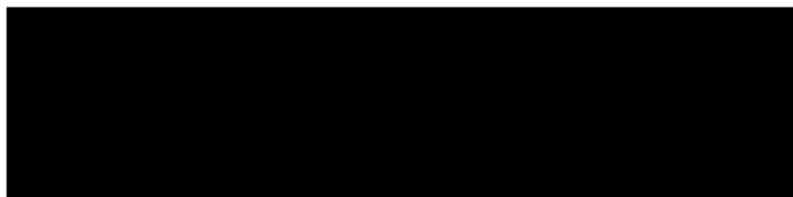


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C1

Date: **AUG 20 2012**

Office: CALIFORNIA SERVICE CENTER

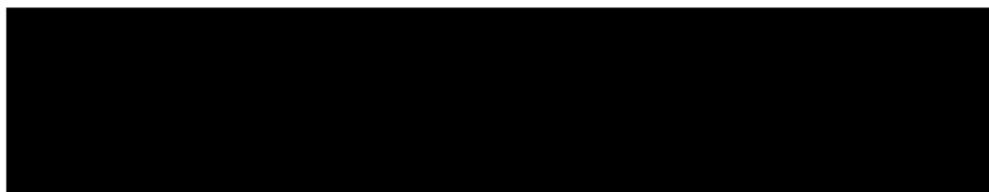


IN RE: Petitioner:
Beneficiary:



PETITION: 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition and her reasons for doing so, and subsequently exercised her discretion to revoke approval of the petition on August 11, 2009. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal on March 9, 2011. The petitioner's April 8, 2011 motions to reopen and reconsider the decision were erroneously dismissed by the director. The AAO reopened the matter on service motion on June 6, 2012. The AAO reaffirms its previous decision and the petition remains denied.

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 religious instructor and religious education director. The AAO affirmed the director's decision finding that the petitioner had not established that the position qualifies as that of a religious worker. The AAO found that the director's determination that the beneficiary was not working in the capacity claimed in the petition was based on a faulty analysis of the evidence; however, the AAO determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition.

Counsel submits a brief in response to the service motion.

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 regulation in effect at the time the petitioner filed the petition provided, at 8 C.F.R. § 204.5(m)(1), that the alien must be coming to the United States at the request of the religious organization to work as a religious worker. Therefore, to establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation stated only that it was an activity relating to a traditional religious function. The regulation did not define the term "traditional religious function" and instead provided a brief list of examples. The list revealed that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation stated that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflected that nonqualifying positions were those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derived from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Accordingly, under the previous regulation, the U.S. Citizenship and Immigration Services (USCIS) interpreted the term "traditional religious function" to require a demonstration that the duties of the position were directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Counsel asserts on motion:

The USCIS states that the petitioner submitted no documentation to establish the petition of a religious instructor or religious director is defined and recognized as a religious occupation. This is without merit. The plain language of the statute states the religious instructor is one of the positions which qualifies as a religious occupation. It is written in the plain reading of the statute. In this case, the USCIS is attempting to amend and add a modifier, requirements that appear nowhere in the statute. The petitioner argues that the USCIS is not part of the legislative branch of the government and is therefore not allowed to amend the laws written by Congress. The USCIS is part of the executive branch and its duty is to enforce the law, not engage in impermissible rule making with new interpretations of the plain meaning of a statute.

Counsel, for the most part, accurately outlines the requirements of the regulation and the role of USCIS; her argument, however, is not persuasive. While the regulations list religious instructor as an example of a religious occupation, a job title does not make a position a religious occupation within the meaning of the regulation. USCIS must look beyond the mere title or labeling of the position to the actual duties associated with that title. The petitioner outlined the beneficiary's duties as follows:

The main duty of the Religious Instructor and Religious Education Director is to educate church members to deal with their personal, social and spiritual life based on the Word of God. She will be required to lead bible studies and other religious activities that will nurture the believer so that she comes to understand God's will in their lives. She will confer with parents and adolescent children to work out family problems. She does plan religious mission studies and activities. She is responsible to communicate with youth groups and to make educational programs for them. She does create religious study courses and programs, provides spiritual counseling and guidance and assistance to church members. Also, she manages making Bible study book on text, and other material for Sunday Bible School and Youth group.

The petitioner provided a weekly work schedule for the beneficiary which lacked specifics as to the beneficiary's actual activities. For example, the beneficiary's schedule includes an after-school program with "religious activities" but does not specify the form, nature or content of those activities. In dismissing the appeal, the AAO stated:

While the petitioner stated in its intention letter that the beneficiary would confer with parents and children, the schedule submitted contains no such conferences. On the other hand, her duties on Saturday and Sunday include preparing for "worship" and "worship services." The petitioner did not explain the requirements for the beneficiary with worship or preparing for it.

On motion, counsel asserts:

Petitioner argues that the AAO is imposing a standard inconsistent with the regulation it purports to interpret. The term "worship" according to the dictionary definition is to, [sic] "a set of ceremonies or prayers by which this devotion is expressed." The AAO's interpretation is attempting to develop additional requirements that are not in the regulation.

Counsel's argument is again unpersuasive. Inclusion in the list of job responsibilities of terms that are normally associated with religious activities does not by itself make that activity a duty of the position. The beneficiary's proposed duties as a religious instructor and religious education director as outlined by the petitioner do not include any provisions for "worship" or "worship services." The evidence is unclear as to what the beneficiary's exact duties would entail in preparing for worship or her responsibilities during the worship services. The record

does not establish whether these activities are of a personal nature or a requirement for the position. Similarly, describing after school activities as “religious” without further explanation provides no insight into what these activities actually entail. The petitioner cannot pad a job description with personal discretionary activities or with religious descriptors to make the position seem more religious in nature.

Counsel further asserts that the AAO requires the petitioner to establish that “all” of the duties of the position must relate to a religious activity, a position that has been rejected by both the Third Circuit Court of Appeals in *Camphill Soltane v. DOJ*, 381 F.3d 143 (3rd Cir. 2004), and the Ninth Circuit Court of Appeals in *Love Korean Church v. Chertoff*, 549 F. 3d 749, (9th Cir. 2008).

Counsel misinterprets the AAO’s decision. While the AAO in its March 9, 2011 decision stated that under the previous regulation, USCIS interpreted the term “traditional religious function” to require a demonstration that the duties of the position were directly related to the religious creed of the denomination, nowhere does it state that *all* of the duties of the proffered position must relate to a religious activity. As discussed above, the duties of the proffered position, as enumerated by the petitioner, would, in theory, support its claim that the position is that of a religious occupation. However, the weekly schedule of the beneficiary’s duties are not consistent with the enumerated duties and do not establish, without more, that the duties are primarily religious in nature. As the AAO previously discussed, the schedule references vague activities that may or may not be religious in nature or may or may not be required duties of the job. Excluding these hours that cannot be explained by the evidence of record, the beneficiary’s schedule does not establish that the duties of the position are primarily religious in nature.

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

Counsel asserts that the AAO affirmed the director’s decision that the beneficiary was not working in the capacity claimed in the petition because she held a cosmetology license. Counsel misreads the AAO’s decision, which held that even if the beneficiary had worked as a cosmetologist, the regulation does not prevent her, as a non-minister religious worker, from performing secular work as long as it is not her primary source of income.

The AAO, however, found that the petitioner had failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition. The petition was filed on March 28, 2006. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The petitioner submitted, *inter alia*, an uncertified copy of the beneficiary’s IRS Form 1040X, Amended U.S. Individual Tax Return, for 2004 which was dated March 20, 2006, and a March 6, 2006 “work experience verification,” in which the petitioner certified that the beneficiary had worked for the petitioner since January 7, 2004. On appeal, the petitioner submitted an uncertified

copy of the beneficiary's unsigned and undated IRS Form 1040, U.S. Individual Tax Return for the year 2004. The form indicates that the beneficiary and her husband reported \$18,000 in income derived from his unspecified business. No income was shown for the beneficiary and her occupation is listed as "housewife." Although counsel asserts that the evidence establishes that the beneficiary has worked continuously for the petitioner since 2004, the petitioner does not address the discrepancy in the above evidence and submits no other documentation on motion to establish the beneficiary's qualifying work history.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As no new evidence has been presented to overcome the grounds for the previous decision to dismiss the appeal or to show that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed.

ORDER: The AAO's decision of March 9, 2011 is affirmed. The petition remains denied.