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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

C1

[Redacted]

Date:

Office: CALIFORNIA SERVICE CENTER

FILE:

[Redacted]

FEB 02 2012

IN RE:

Petitioner:

[Redacted]

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:

[Redacted]

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 \$585. 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. In a subsequent appeal, the Administrative Appeals Office (AAO) on appeal withdrew the director's decision and remanded the petitioner's case to the director. On remand, the director again denied the petition and certified her decision to the AAO for review. Upon review, the AAO will affirm the director's decision.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petitioner is a religious non-profit organization that operates three funeral homes in Northern California. 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 an assistant funeral director. The director determined that the petitioner had not established that the beneficiary's intended position qualifies as a religious occupation.

On appeal, the petitioner submits a statement from counsel, letters, articles, and other 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 sole issue in contention is whether the petitioner seeks to employ the beneficiary in a religious occupation, which the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines 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.

The petitioner filed the Form I-360 petition on April 4, 2008. In a letter accompanying the initial filing of the petition, Gene B. Kaufman, executive director of the petitioning organization, described the position as follows:

The assistant funeral director position does in fact relate to a traditional Jewish function, to wit, directing and supervising Jewish religious burial services.

The complexity of the religious laws governing burial and the consideration of mourning family members makes it imperative that the funeral home employ Jewish staff members to conduct these traditional religious functions. The funeral directors and funeral director assistants employed by [the petitioner] are well versed in the Jewish laws relating to the deceased and burial services. These employees work closely alongside mourning family members, instruct them as to the requirements set forth by Jewish law and guide and teach them these traditional practices.

[The beneficiary] will continue to assist in the instruction of grieving family members and friends on Jewish funeral religious practices, laws and rituals, and help in guiding mourning family members throughout the funeral and mourning processes. As such, an essential aspect of [the beneficiary's] responsibilities will include being an educator to the clients. [The beneficiary] will help instruct them with regards to the meaning of traditional Jewish burial practices. [The beneficiary] will help explain and guide these families through the *Shiva*, the traditional seven day mourning period immediately following burial observed by the bereaved. Moreover, he will help instruct family

members as to how to perform the *Kaddish*, the traditional Jewish prayer recited after burial. Furthermore, [the beneficiary] will help instruct families regarding the *Keriah*, the practice of rending/cutting a garment or symbolically wearing a cut black ribbon over the heart to indicate the one is in mourning....

also stated:

[The beneficiary] is well suited to continue to perform the duties listed herein for the position of assistant funeral director. He has been successfully employed in the aforementioned position continuously since September of 2005. Moreover, he was employed by the petitioner in the aforementioned capacity during his practical training period. The petitioner and various client families and community members appreciate [the beneficiary's] particular and thorough knowledge of Jewish laws and practices and his fluency in the Hebrew language.

The petitioner submitted substantial documentation about the petitioning organization, including organizing documents, photographs, publications, and financial records. The petitioner also submitted information about the beneficiary's background, including a former employer's letter, attesting to the beneficiary's work as a Hebrew and Judaica teacher for students ages 10 to 17 at a reform Jewish synagogue.

The director denied the petition on April 13, 2010, stating:

The beneficiary's duties do not relate to a traditional religious function. On 7/19/2008 and 7/22/2008, a compliance review site visit was conducted by Immigration Officer, [redacted]. Also, on 7/23/2008, a telephonic interview was conducted with the [redacted] beneficiary, and the funeral service coordinator. All provided [] testimony that the [redacted] based [petitioner] (where the beneficiary is working) is primarily an office in which funeral arrangements are made. The beneficiary's primary job duties involve procuring death certificates, helping family members select caskets, obtaining necessary medical disposition documents and assisting in placing obituary notices in the newspapers. The beneficiary admitted, through the interview, that he is not directly involved with any aspect of preparing a body for burial. He handles the paper work associated with deaths according to the California laws.

The instant I-360 filing is based on the beneficiary's position as an assistant funeral director, qualifying as a religious occupation. USCIS does not use a title, by itself, when determining whether a particular job qualifies as a religious occupation. The specific duties of the offered position combined with the nature of the petitioning entity's denomination are factors that USCIS considers. Each position must be evaluated based upon the religious nature of the actual job duties. The beneficiary's primary job duties as stated by the petitioner involve procuring death certificates, helping family members

select caskets, obtaining necessary medical disposition documents and assisting in placing obituary notices in the newspapers. The beneficiary's day to day duties do not require any special religious training. The beneficiary is not directly involved with any aspect of preparing the body for burial. He handles the paperwork associated with deaths according to the California laws. Therefore, the duties of the beneficiary are primarily administrative.

In this instance, the duties of the occupation do not have religious significance and embody the tenets of that particular religious denomination. The record is not persuasive in showing that the proposed duties of the position are sufficiently specialized in a theological doctrine so as to constitute a religious occupation. Accordingly, the petitioner has not demonstrated that the position offered constitutes a qualifying religious occupation.

Therefore, the petitioner has not established that the duties of the beneficiary's prospective occupation relate to a traditional religious function.

In a letter dated September 2, 2008, [REDACTED] stated:

On July 19, 2008 a Saturday, the Jewish Sabbath, Officer Condon of USCIS conducted a site visit at [REDACTED]. I was not present during this visit. [REDACTED] with an employee of our San Francisco chapel, [REDACTED] is not the signatory of the I-140 petition. He is not the beneficiary's supervisor, does not work with the beneficiary on site and is not an authority as to the beneficiary's job duties or job responsibilities. Any information given to USCIS by this employee is not acceptable testimony as to [the beneficiary's] position with [the petitioner].

On July 23, 2008, Officer Condon conducted a site visit with [the petitioner's] offices in [REDACTED] the site of [the beneficiary's] employment. [The beneficiary] spoke with [REDACTED]. Moreover, on July 23, 2008, [REDACTED] and I spoke telephonically regarding [the beneficiary's] employment with [the petitioner]. [REDACTED] beneficiary's employer, did not state that [the beneficiary's] position primarily involves procuring death certificates, obtaining dispositions or placing obituary notices in newspapers.

In fact, [the beneficiary's] job duties with [the petitioner] involve functioning as a Jewish educator to the Chapel's clients. He instructs them with regards to the meaning of traditional Jewish burial practices including preparation of the body for burial and the specific religious requirements for each step in such preparation. [The beneficiary] also functions as a *shomer* in some instances where he guards the body of the deceased from the time of death until the time of burial while prays or studies Torah. [The beneficiary] is also involved with casket selection. However, this duty primarily relates to explaining

to family members Jewish laws relating to caskets and which caskets are kosher in terms of Jewish law and why and which caskets are not kosher.

In a letter dated September 3, 2008, the beneficiary stated:

On July 22, 2008 immigration officer, [REDACTED] conducted a site review at the [the petitioner's], [REDACTED] interviewed me, and asked me questions about my job duties. I answered all her questions and made sure to explain that other than [sic] the required California law duties that my job requires a valuable amount of tasks are of religious origin. [sic] I strongly believe that Officer [REDACTED] misunderstood my explanations towards my duties. For example, in her report she indicated that one of my duties is to help a family to choose a casket, stating that it is not a religious task. Part of my duties as a funeral director assistant is to help families to choose a casket for their loved ones but in addition of [sic] choosing a casket I also instruct and educate the families which casket is acceptable according to the Jewish religion law, and what are the reasons for it to be acceptable....

Although both [REDACTED] and the beneficiary state that the director misunderstood the conversations that took place during the site visit, the petitioner has not provided any evidence regarding how much time the beneficiary spends performing assistant funeral director duties or how much time he spends educating customers about faith-based traditions. Although the petitioner argues that a large percentage of the beneficiary's time is spent providing religious instruction and that duties such as procuring death certificates, obtaining dispositions or placing obituary notices in newspapers are ancillary, the petitioner has not submitted evidence that the beneficiary works full-time performing a religious occupation such as religious education. Further, the petitioner has not provided any evidence that the duties of an assistant funeral director primarily relate to a traditional religious function and that the position of assistant funeral director is recognized as a religious occupation within the Jewish faith. The petitioner has submitted evidence of the many rituals required for preparing the body for burial. The evidence submitted explains that the preparation of the body is done by volunteers in the Jewish community, and that, the petitioner's employees do not personally perform these duties.

The record contains several letters from rabbis in the San Francisco area. In his letter dated September 4, 2008, [REDACTED] stated:

As rabbis, we count on [the petitioner] to guide families during the grieving process, helping them to make proper Jewish decisions based on Jewish practice. We count on funeral directors like [the beneficiary] to teach and explain the many rituals and practices associated with Jewish mourning. We also depend on the funeral director to be steeped in the richness of the Jewish tradition and to be knowledgeable about proper preparation of the body for burial, in strict accordance with Jewish tradition. In Judaism, professionals like [the beneficiary] are considered religious functionaries.

Other rabbi letters in the record describe the position differently than [REDACTED]. None of the other rabbis' letters are consistent with [REDACTED] letter. In a letter dated August 19, 2008, [REDACTED] stated "In Jewish Tradition the people who work in the mortuary are called *Chevrah Kadisha* or Holy Association. Since the work is considered Holy work *it is religiously preferred* that this work be performed by fellow Jews." [emphasis added] In his letter [REDACTED] states that it is "religiously preferred" that the work of the mortuary be performed by fellow Jews. [REDACTED] states that some work of a mortuary is not unique, like obtaining death certificates, but that burial rituals in the Jewish tradition are extensive and complex. [REDACTED] states that the beneficiary is an invaluable cultural connection for the Israeli clients in particular, and labels the beneficiary's position as "an administrator, a part-time director and possesses the temperament of a comforter, a helper." In an article submitted by the petitioner, the *Chevrah Kadisha* is described as a Jewish burial society comprised of men and women volunteers who prepare the deceased for a proper Jewish burial. As noted above, the director cites testimony by employees of the petitioner including the beneficiary who stated to a USCIS representative at a site visit that the beneficiary's duties consisted primarily of making funeral arrangements such as procuring death certificates, helping family members select caskets, obtaining necessary medical and disposition documents and assistance in placing obituary notices. While the petitioner's executive director and the beneficiary object to this characterization, the letters of record from the rabbis do not individually or together establish that the beneficiary's position with the petitioner is a traditionally religious occupation. The rabbi letters implicitly refer to the work of the mortuary as primarily religious and state that the work of the mortuary is preferably fulfilled by those steeped in the Jewish traditions. Yet, not all positions within the mortuary are religious occupations, and the evidence does not objectively establish that the beneficiary's duties as an assistant funeral director primarily relate to a traditional religious function rather than that they are primarily administrative in nature. As stated previously, the beneficiary's duties do not include preparing the deceased for burial. The beneficiary did not state at the site visit that one of his primary duties is to stand with the body of the deceased from the time of death until the time of burial, praying or studying Torah. He did not testify that his duties are primarily instructional in nature.

The regulation at 8 C.F.R. § 204.5(m)(7)(ix) requires the petitioner to attest that the beneficiary is qualified for the position sought, but the regulations impose no minimum threshold as to what the qualifications may be. The key test is the nature of the duties, rather than the nature of the alien's preparation for those duties, that defines a religious occupation.

The petitioner has not demonstrated that the duties of its assistant funeral director primarily relate to a traditional religious function and the record contains no evidence that the position is recognized as a religious occupation within the Jewish faith. Thus, the director correctly denied the petition.

Beyond the decision of the director, the petitioner has not established that it has the ability to compensate the beneficiary. The AAO notes that the record contains the petitioner's profit and loss (P&L) statements for 2007 and 2008, years during which the beneficiary worked for the petitioner as an assistant funeral director in R-1 status. According to the P&L statements, the petitioner's net income was -\$71,853.18 in 2007 and -\$491,544 in 2008. The petitioner's [REDACTED] statements call into

question its ability to compensate the beneficiary as required by the regulation at 8 C.F.R. § 204.5(m)(10). For this additional reason, the petition must be denied.

The petitioner will be denied and the director's decision will be affirmed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petitioner proceedings, the burden of proving eligibility for the benefit rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The director's decision is affirmed. The petition is denied.