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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: OFFICE: CALIFORNIA SERVICE CENTER

FILE:



**FEB 09 2012**

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.

Thank you,

*Elizabeth McCormack*

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 withdraw the decision of the director and remand the petition.

The petitioner is a *yeshiva*, or a private Lubavitcher (Jewish) Girl's School, in Brooklyn, New York. 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 *melamed*, or a religious teacher. On December 3, 2009, the service issued a Request for Evidence ("RFE"). On January 10, 2010, the petitioner responded to the RFE. The director determined that the evidence contained discrepancies, such as the address of the institution, and that some of the evidence requested was not submitted, such as evidence showing the beneficiary's past compensation, work schedule or the relationship of the proposed position to a traditional religious function. In addition, the director found that the petitioner failed to provide a complete description of the employment offer.

On appeal, the petitioner submits a brief from counsel and several supporting exhibits.

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 is whether the petitioner seeks to employ the beneficiary in a qualifying 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.

The petitioner filed the Form I-360 petition on June 8, 2009. There, on question 5, the petitioner stated that the title of the position offered would be “*melamed*: religious teacher.” The petitioner stated that the beneficiary would be:

- Responsible for teaching the prayers – the ritualistic aspects, and for the older students, the philosophical aspects.
- Responsible for teaching the special meaning of prayer in the life of Jewish women; and would accompany the student body to all prayer services.

In the record, there is ample evidence to support the finding that the beneficiary’s proposed duties are those of a religion teacher. In the record, there is a school schedule, in which the beneficiary teaches “*Shacharis*” from Sunday to Friday, and during the week he teaches courses in “*Mincha*,” “*Halacha*” and “*Tehillim*.”<sup>1</sup> These subjects are religious in nature, and the beneficiary’s teaching duties of these subjects are within the scope of a “religious occupation” as defined by 8 C.F.R. § 204.5(m)(5).

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<sup>1</sup> According to the Jewish Virtual Library website, “*shacharit*” is the morning daily prayer service in the Jewish religion; “*Mincha*” is the afternoon daily prayer service in the Jewish religion; “*Halakha*” refers to purely legal matters in the Jewish oral law. According to the Jewish Virtual Library, “in modern Jewish life, the word *halakha* refers to any issue of Jewish law... The word also is used for the Talmud’s legal sections, the codes of Jewish law or any of Judaism’s legal writings;” “*Tehillim*” is the Hebrew word for Psalms, which is a biblical book found in the Old Testament. (Source: <http://www.jewishvirtuallibrary.org>; accessed January 24, 2012)

On appeal, the petitioner submitted further proof establishing that the beneficiary's duties primarily relate to a religious function. The appeal contains a letter from [REDACTED], who listed the beneficiary's responsibilities as a *melamed*. He wrote:

Aside from regular mandatory subjects which include Halacha, Yehadus, Jewish Religious Holidays, Novi, Parsha, Chassidic Philosophy and Hebrew, you will be expected to focus on Tefilah, Chumash and Rashi. You will be responsible to tailor the prayers to the various class levels according to Tefilah tradition. You will be required to accompany your student body to all prayer services. You will teach students how to pray, understand and translate prayers. This will include discussing the philosophical meaning of prayer with your students, and the special meaning of Tefilah in the life of a Jewish woman. Furthermore, as an employee of an orthodox Jewish girls' school, you will need to prepare each student for a Bat Mitzvah (confirmation) ceremony, as many of your students are approximately 12 years of age.

At the same time, you will be involved in implementing advanced methods of teaching Chumash while analyzing and translating the text of Lashon HaKodesh (Hebrew) into English. Rashi skills are an integral part of teaching Chumash. These skills including learning to read Rashi script, translating, and explaining Rashi content.

The letter includes the beneficiary's schedule, which reflects that the beneficiary will teach only classes related to the Jewish faith.<sup>2</sup> This schedule represents a full work week, going from Sunday from 9:30 AM until 1 PM, Monday from 8:30 AM until 3 PM, Tuesday to Thursday from 8:30 AM to 4 PM and Friday from 8:30 AM to 12:05 PM. These courses are religious in nature, leading prayers and teaching subjects that deal with Jewish history, the Hebrew language and religion, such as *Biur Tefilah* (which was defined as explanation of prayer), psalms, and code of Jewish law. The subjects that the beneficiary teaches are religious, not secular in nature.

The AAO finds that the beneficiary will be employed in a religious occupation as defined by 8 C.F.R. § 204.5(m)(5), because this teaching function primarily relates to a traditional religious function and is recognized as a religious occupation within the Jewish religion; the teaching duties are primarily related to inculcating or carrying out the religious creed and beliefs of Judaism; the teaching position is not primarily administrative in nature; and the position is a teaching position, not one that is primarily religious study or training for religious work.

In addition, on appeal the petitioner has submitted the names of religious workers it has employed for the past five years, including their tax information. The petitioner also submitted the beneficiary's work history, in the forms of letters from previous employers. The record includes the beneficiary's proposed

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<sup>2</sup> The beneficiary is teaching a different range of classes than the schedule previously submitted, but it is acknowledged that the schedule submitted on appeal is for a different school year.

schedule with the duties to be performed in the religious occupation for an average week, and evidence of past compensation.

Therefore, the evidence provided both in the record and on appeal is sufficient to establish the relationship between the proposed position and a religious function.

The second issue is whether the petitioner establishes how it intends to compensate the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(10) reads:

*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 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.

In the present case, the Form I-360, submitted by the petitioner, shows that it intends to compensate the beneficiary \$25,000 per year plus meals. The petitioner submitted IRS Forms W-2 for 2007 and 2008 which demonstrate that the petitioner paid the beneficiary \$24,999.96 for each of those years. Thus the petitioner has shown that it has the ability to compensate the beneficiary, since it has paid the proffered wage in the two years preceding this application.

Further, the director wrote that, "the petitioner submitted a certificate of occupancy; however, the certificate is for a building at another address: [REDACTED] instead of the work location address. The discrepancies in the petitioner's submissions have not been explained satisfactorily." On appeal, the petitioner submitted a document from the City of New York community board demonstrating that the two addresses are in fact the same. The letter states, "to allow an extension of the existing school at [REDACTED] aka [REDACTED]." An additional sheet from the NYC Department of Buildings lists the school's address as both [REDACTED] and [REDACTED].<sup>3</sup> Therefore, the AAO finds that the petitioner has overcome any discrepancies between the two addresses of the school.

The evidence submitted on appeal overcomes the director's stated basis for denial. The petitioner has established that it intends to employ the beneficiary in a qualifying religious occupation, and that it has the ability to compensate the beneficiary. The original grounds for denial no longer exist. The petition may not, however, be approved at this time. The USCIS regulation at 8 C.F.R. § 204.5(m)(12) requires the director to conduct an inspection of the petitioner's premises. The petition will be remanded in order for the director to conduct the site inspection.

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<sup>3</sup> Google maps shows that these two addresses are on the same corner, perpendicular to one another.

Further, the regulation at 8 C.F.R. § 204.5(m)(4) requires that the beneficiary have worked in lawful immigration status in the United States continuously for at least the two-year period immediately preceding the filing of the petition, if he was in the United States. The regulation at 8 C.F.R. § 204.5(m)(11) requires that this qualifying prior experience in the United States must have been authorized under United States immigration law. The record shows that the petitioner filed the Form I-360 petition on June 8, 2009. Therefore, the petitioner must show that the beneficiary was working in lawful status from June 8, 2007 to June 8, 2009. The Form I-360 petition and the Form I-94 indicate that the beneficiary had R-1 status which expired on April 25, 2009. The record also reflects that the beneficiary obtained an R-1 visa stamp expiring on March 21, 2011. Therefore, on remand, the director should determine whether the beneficiary was in lawful status for the two years immediately preceding the filing of the Form I-360 petition, if he was working for the petitioner in the United States.

The director's decision is withdrawn. The petition may not be approved, however, for the reasons discussed above. The petition will be remanded for the director to determine the beneficiary's immigration status in the United States during the two years immediately prior to the filing of the Form I-360 petition and to perform a site visit. The director may issue a request for evidence and allow the petitioner a reasonable period of time to respond. Upon review, the director shall enter a new decision which, if adverse to the petitioner, shall be certified to the AAO for review.

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 the entry of a new decision, which, if adverse to the petitioner, must be certified to the Administrative Appeals Office for review.