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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 23 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:

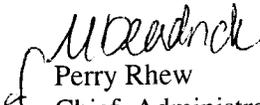


INSTRUCTIONS:

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.

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 appeal will be dismissed.

The petitioner is a Catholic elementary school. 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 principal. The director determined that the petitioner had not established that the position qualifies as that of a religious worker.

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 October 1, 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 October 1, 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 on appeal is whether the petitioner has established that the position qualifies as that of a religious worker.

The [REDACTED] is a school associated with the Roman Catholic Church. In an August 5, 2009 signed letter submitted with the petition, the petitioner stated that the beneficiary began working there as a first grade teacher in 2001 and then as the principal in August of 2007.

The petitioner submitted a general handbook from its archdiocese's Department of Catholic Schools, which lists the religious, professional, character, and physical qualifications that an elementary

school principal must possess. The handbook states that such an individual must be committed to the Catholic church, possess certain prior religious education, and serve as a model of Christianity to others. However, the handbook does not state that the principal's regular work duties are purely or even primarily religious in nature.

The handbook also lists the responsibilities of the principal as:

- Administering the entire school program.
- Supervising the staff and the instructional program.
- Relating with the parents, the parish, and the general public.
- Ensure the implementation of the policies and procedures in the Administrative Handbook for Elementary Schools.
- Participate in regional and deanery meetings for the purpose of reciprocal communication.
- Cooperate with the process of school visitation as an opportunity to strengthen his/her effectiveness.
- Complete accurately and promptly reports requested by the Department of Catholic Schools.
- Participate in administrative inservice programs sponsored by the Department of Catholic Schools.
- Cooperate with and direct the W.C.E.A./W.A.S.C. self-evaluation and accreditation program.
- Communicate and make easily accessible to the school staff all policies, directives, and informational bulletins from the Department of Catholic Schools.
- Inform the pastor and the Department of Catholic Schools of any controversial or possible litigious matters that involve the school, school personnel, or the Archdiocese.
- Comply with the requirements of the Education Code that apply to non-public schools in matters of health and safety.
- Complete the State Department of Education's annual private school affidavit accurately, and forward as directed by the Department of Catholic Schools.
- Investigate, under the direction of the Department of Catholic Schools, government programs for which the school might be eligible.
- Complete all forms required by county health agencies.

The petitioner's August 5, 2009 letter submitted with the petition lists these same duties. The AAO notes that many of these responsibilities appear to be secular in nature. These secular duties include, but are not limited to, implementing policies and procedures from an administrative handbook, participating in meetings and administrative programs, promoting the school to others, and relaying messages to parish members. Although the petitioner contends that the primary function of principals at Catholic elementary schools is to serve as the "... spiritual, educational, and moral leaders," the majority of the position's duties appear to be administrative in nature.

On appeal, counsel has submitted a copy of the beneficiary's sample weekly work schedule. The submitted schedule does emphasize the principal's catechetical, spiritual, and moral areas of focus. However, it also delineates the principal's regular work schedule, which includes mostly non-religious tasks such as visiting and eating with the children, conducting conferences with parents,

completing administrative paperwork, writing bulletins, attending faculty meetings, planning student retreats, and organizing service activities.

Counsel emphasizes that the petitioner's duty as an educational institution is to indoctrinate its students into the Catholic faith and that the beneficiary's duty as its principal is to serve as a model leader to fulfill such a religious purpose. Counsel states that the beneficiary's primary obligation is to ensure the Catholic values among its students and staff. Counsel notes that the position requires that an individual have specific religious training and experience with the Catholic educational philosophy. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation, the requirements for which are defined at 8 C.F.R. § 204.5(m)(5) as follows:

- (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 regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. U.S. Citizenship and Immigration Services (USCIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, that the duties involve inculcating or carrying out the religious creed and beliefs of the denomination, and that the duties are not primarily administrative in nature.

The AAO concurs with the director's finding that the petitioner's school is an elementary school with a supplemental curriculum in the Catholic religion. The beneficiary may have specific, required religious training and may be responsible for serving as a religious model within the school community, but the vast majority of her duties appear to be secular and administrative in nature, not religious. While limited administrative duties incidental to religious functions are permissible, the beneficiary's administrative duties are her primary responsibility.

The AAO finds that the petitioner has submitted sufficient evidence on appeal, as requested by the director in her decision, to establish that the beneficiary had been working in the claimed capacity for the two-year period preceding the filing of the petition and that the petitioner has the ability to compensate the beneficiary the proffered wage.

Notwithstanding, the petitioner has failed to establish that the proffered position qualifies as that of a religious worker as defined by 8 C.F.R. § 204.5(m)(5).

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.