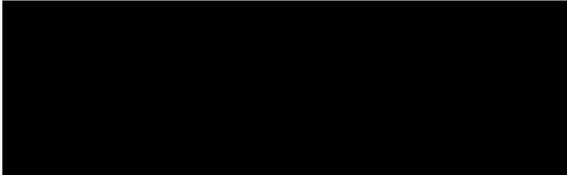




U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



C1

DATE: Office: CALIFORNIA SERVICE CENTER

FILE:

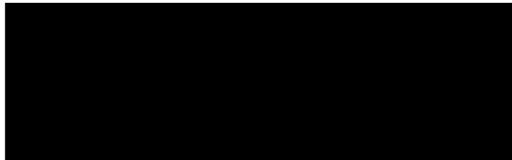
JAN 23 2012

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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition and it is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and will remand the petition for further action and consideration.

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 minister. The director determined that the petitioner had not established that the beneficiary will be employed on a full time basis, that the organization is "acting as a bona fide religious organization for the members," that the beneficiary is qualified for the proffered position, and that it has extended a qualifying job offer to the beneficiary.

On appeal, counsel argues that the petitioner "is a well renowned church," that the beneficiary is fully qualified for the proffered position, and that the church at which the beneficiary will work has approximately 50 members.

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 on appeal is whether the petitioner has established that the beneficiary will be engaged in full time employment. The U.S. Citizenship and Immigration Services

(USCIS) regulation at 8 C.F.R. § 204.5(m)(3) provides that to be eligible for classification as a special immigrant religious worker, the alien must be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in a qualifying religious occupation or vocation.

The job offer submitted with the petition identifies the duties and hours of the proffered position as follows:

Hrs per Week	Responsibilities
10	Preaching on Sunday services. Serving of sacraments and Holy communion to immigrants that are sick, visiting hospitals, prisons and community weekly spiritual events.
8	Teaching Catechism and foundational Biblical Doctrines of Dedication, Water Baptism, Holy Communion & Christian Wedding
8	Establishment of Home Cell churches and conducting weekly prayer meetings among the immigrant communities in their own local language.
8	Preparing and ministering Cross Cultural Multi ethnic literature and church worship music in the native language.
8	Spiritual counseling and discipleship instruction classes for new believers from minority immigrant community.

The offer indicated that the beneficiary would receive a compensation package that included \$350 per week, a parsonage, utilities, telephone, car, visitation allowance “and other clergy benefits.”

In a January 10, 2011 Notice of Intent to Deny (NOID) the petition, the director notified the petitioner that:

[A] reliable source of information indicated that [the petitioner], based out of Columbia, SC, but with multiple affiliated churches located nationwide, is selling nonimmigrant and immigrant religious worker visa[s]. In exchange for a fee ranging from \$6,000 to \$8,000, this church fraudulently sponsors predominantly Indian workers to perform full-time religious duties for the church when, in fact they are working illegally at Indian-run businesses throughout the community and paid cash “under the table”.

The director instructed the petitioner to submit, *inter alia*, documentary evidence of the beneficiary’s qualifying work experience and additional information about the proffered position. The director instructed the petitioner to:

Provide a detailed description of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Explain how the duties of the position relate to a traditional religious function. [Emphasis omitted.]

In its February 2011 response, the petitioner, through its founder/pastor, stated that the proffered position is that of religious minister, that the beneficiary will work 40 hours per week, and would receive annual remuneration of \$30,212. The petitioner also provided another schedule of the proposed duties, as follows:

S1. #	Job Description	Hour/day (Approx)	Hour/Week (Approx)
1.	Teach or otherwise help in spreading the religion's doctrine and practices.	30 mins	3 ½ hours
2.	Deal with life-cycle events such as childbirth, baptism, circumcision, coming of age ceremonies, marriage, and death;	1 hr- 2hrs	Undetermined
3.	Preaching on Sunday Services;	1 ½ hour	10 ½ hours
4	Serving of Sacraments and Holy communion to immigrants;	1 hour	5 hours
5.	Teaching Catechism and foundational Biblical Doctrines of dedication;	45 mins	5 h 15 min
6	In charge of establishing home cell churches and conducting weekly prayer meetings among immigrant communities;	1 hour	5 hours
8 (sic)	Provide Chaplaincy services to individuals at home or business establishments (where ever requested) hospital visitation, prison visitation, officiating at weddings, hour dedications, christening and funerals. Conducting spiritual counseling and discipleship instruction classes for new believers from minority immigrant community.	3hr	10 hours

The petitioner stated that the beneficiary had been assigned "to assist in the church pioneering with our affiliate [redacted] located at [redacted] and that her hours would vary on a day-to-day basis.

The director determined that the petitioner had provided inconsistent work schedules for the beneficiary, stating that the "beneficiary does not have Sunday Services for his organization" and that the petitioner had "failed to provide evidence that 'any of the activities' listed were ongoing." The director further stated that the petitioning organization consisted of only 17

members, which included the beneficiary's family. The director stated that as the organization had been in existence since 2004, a congregation of 17 members "is not a sign of expanding congregation growth requiring a full time minister."

On appeal, counsel asserts:

The petitioner respectfully states that the job duties are for a future employment as the Beneficiary's status is still in process. The expansion of the church will take place once the Beneficiary is confirmed in a permanent status. The job duties as such are for the proffered position and are an essential requirement if and when the Beneficiary gains Permanent Residence.

Counsel further asserts:

The Petitioner respectfully states that there are nearly 50 members for this church, however all the members are not paying the membership fees on a regular basis. The congregations are large and there is a regular flow of devotees in the Church. The Petitioner respectfully states that the USCIS has made an error stating the church has 17 members.

The record does not support the director's conclusion that the petitioner has provided inconsistent schedules of duties for the position. Each of the schedules indicates that the position involves preaching on Sunday, establishing home cell churches, and other sacerdotal duties of a minister. The record also does not support the director's conclusion that the church has only 17 members.

The petitioner nonetheless does not contest the director's conclusions, and counsel's statements do not provide sufficient clarification. None of the above statements of counsel are supported by evidence in the record. While counsel alleges that the duties are prospective in nature, the record reflects that the beneficiary has allegedly worked for [REDACTED]. The record does not establish the number of members in the [REDACTED] congregation. While the duties of the position as outlined by the petitioner could reasonably be expected to encompass at least 40 hours per week as alleged by the petitioner, the record contains no documentation of the size of the beneficiary's congregation. Accordingly, the record is remanded to the director for further investigation as to the whether the size of the petitioner's [REDACTED] congregation provides the beneficiary with full time employment.

The second issue is whether the petitioner is "acting as a bona fide religious organization for the members." The director stated:

The Service requested business licensing and zoning permits allowing the organization to act as a church [REDACTED]

No evidence of business licensing or permits to conduct ongoing religious activities at the address of [REDACTED] was submitted into evidence. The petitioner submitted photographs . . . of the [REDACTED] to show it is a religious organization. This does not meet the requirements requested in regard to business licensing and zoning for a religious organization. The petitioner states the members of his organization attend Sunday services at the . . . [REDACTED]

The record does not reflect that the director requested this information from the petitioner. The record is also unclear as to the nature of this request as the petitioner alleges that the beneficiary serves in its affiliated church in New York. The petitioner states on appeal that the petitioning organization started in 1973 in Florida and moved to South Carolina in 1981. A Certificate of Existence as a Nonprofit Organization indicates that the petitioner was incorporated in South Carolina in 1992.

As the record does not support this basis for the director's decision, it is withdrawn.

The third issue is whether the petitioner has established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 204.5(m)(3) defines religious worker as "an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister." The regulation also defines minister as one who "[i]s fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination." Finally, the regulation at 8 C.F.R. § 204.5(m)(9) provides:

Evidence relating to the qualifications of a minister. If the alien is a minister, the petitioner must submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

- (iii) For denominations that do not require a prescribed theological education, evidence of:
 - (A) The denomination's requirements for ordination to minister;
 - (B) The duties to be performed by virtue of ordination;
 - (C) The denomination's level of ordination, if any; and
 - (D) The alien's completion of the denomination's requirements for ordination.

With the petition, the petitioner submitted a copy of a May 14, 2000 certificate indicating that the beneficiary received a Bachelor of Theology degree from the International Bible Academy, which is administered by the petitioning organization, and a November 11, 2001 certificate of ordination granted by the petitioner.

In response to the director's NOID, the petitioner submitted a copy of a 2011 certificate of accreditation from the American Accrediting Association of Theological Institutions, Inc. issued to the International Bible Academy and resubmitted the beneficiary's ordination certificate.

In denying the petition, the director stated:

Although the beneficiary has met the qualifications for the petitioning organization in regard to obtaining a degree; the USCIS requires that all baccalaureate or higher degrees must be obtained from an accredited universit[y], which the International Bible Academy is not. The director stated that "to perform services in a specialty occupation," the petitioner must establish that the beneficiary holds at least a bachelor's degree, holds an unrestricted state license or has the education, specialized training, and/or progressive responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation.

In denying the petition, the director stated that "to perform services in a specialty occupation," the petitioner must establish that the beneficiary holds at least a bachelor's degree, holds an unrestricted state license or has the education, specialized training, and/or progressive responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation." The director indicated that the Form I-360 conditioned the beneficiary's employment on her completion of a Bachelor of Theology degree and that the documentation indicates that the beneficiary "has received the required education." The director stated that "USCIS must have documentation to

show the required education is from an accredited organization” and that [e]ducational accreditation is a federal requirement.”

The director’s finding regarding the beneficiary’s qualifications is unclear. The regulation governing immigrant religious worker petitions does not require the petitioner to establish that the beneficiary has any specific degree, only that she is fully trained according to the denomination’s standards. If the petitioner’s denomination requires a specific course of theological education, then the petitioner must submit documentation to establish that the theological education is accredited by the denomination. It is not clear what aspects of the petitioner’s requirements and those of federal regulation are lacking in the petitioner’s evidence as it relates to accreditation of the International Bible Academy. The director appears to be conflating the requirements of 8 C.F.R. § 204.5(k) with the requirements of the regulation 8 C.F.R. § 204.5(m)(9).

However, the regulation requires that the petitioner submit evidence of the beneficiary’s transcripts and the curriculum from the International Bible Academy. The petitioner has not provided this information. On remand, the director should address whether the petitioner has met the requirements of the regulation 8 C.F.R. § 204.5(m)(9).

Finally, the director determined that the petitioner has not established that it has extended a qualifying job offer to the beneficiary apparently based on her conclusion that the petitioner has not established that the beneficiary will work for at least 35 hours per week. As discussed previously, the director’s conclusion was based on evidence not in the record. The record is therefore remanded for further investigation into the duties and hours of the proffered position.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(12) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization’s facilities, an interview with the organization’s officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record does not indicate that the petitioner has satisfactorily completed the onsite inspection. The matter is therefore remanded for the director to provide the petitioner with an opportunity to comply with the provisions of 8 C.F.R. § 204.5(m)(9) and for the director to determine whether an additional compliance review is required in the instant case.

The matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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 entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.