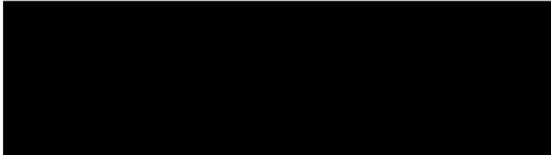


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prevent clearly unwarranted
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC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



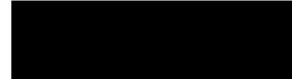
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Date: **MAY 11 2012**

Office: CALIFORNIA SERVICE CENTER

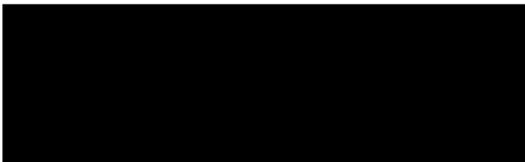


IN RE: Petitioner:
Beneficiary:



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:

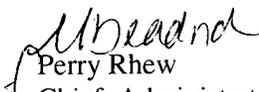


INSTRUCTIONS:

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 AAO will dismiss the appeal.

The petitioner is a Christian school of the Mennonite denomination. 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 science instructor. The director determined that the petitioner had failed to establish that the beneficiary's intended position qualifies as a religious occupation.

On appeal, the petitioner submits a letter from counsel and additional information regarding the religious nature of its school's teachings.

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

On the Form I-360 petition, the petitioner offered the following description of the beneficiary's duties:

Provide Christ-centered instruction to our students; Plan, organize, and deliver educational materials on such subjects as Anatomy, Biology, Chemistry, Diversity of Life, and Environmental Science; Incorporate Biblical perspective in all concepts.

Within a January 14, 2010 letter accompanying the petition, counsel stated that the beneficiary serves as a teacher and role model within the petitioner's school. Counsel asserted that the beneficiary upgrades the school's academic teachings, designs the curriculum, provides Christian guidance for her students, and serves God through her work. [REDACTED] the superintendent of the petitioner's school additionally submitted a letter dated November 20, 2009 stating that the beneficiary teaches upper level high school science classes and college dual enrollment classes offered through the State College of Florida. [REDACTED] highlights the beneficiary's exemplification of Christian moral values. However, he focuses on her academic excellence, enhancement of cross-cultural awareness, and teaching of science classes.

In denying the petition, the director found that the beneficiary's duties do not relate to a traditional religious function. The director noted that, although the beneficiary must incorporate a Biblical perspective in all aspects of her teaching, the duties of the beneficiary were primarily secular in nature. The director stated that, while the Bible does contain statements about paleontology, astronomy, meteorology, biology, geology, physics, and anthropology, the duties of the beneficiary's occupation of science instructor do not have a religious significance that embodies the tenets of the religious denomination.

On appeal, [REDACTED] contends in a July 26, 2010 letter that the beneficiary's position meets the basic definition of a religious occupation. [REDACTED] asserts that the beneficiary's duties primarily relate to a traditional religious function and that the Mennonite denomination recognizes her position as

a religious occupation. [REDACTED] also states that the duties are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the Mennonite denomination.

On appeal, counsel additionally states that the beneficiary's teaching duties primarily involve providing a Christ-centered course of instruction while incorporating a Biblical perspective in all science concepts. Counsel states that Christian education for its congregation is a fundamental aspect of the religious creed and beliefs of the Mennonite denomination. Counsel then cites *Tenacre Foundation v. INS*, 78 F.3rd 693, 697 (D.C. Cir. 1996) and asserts that USCIS should accept the petitioner's good faith explanation regarding its definition of a religious occupation. First, the AAO notes that the cited opinion predates the new religious worker regulations of November 26, 2008, which established a new definition for a religious occupation. Thus, this case law is not persuasive. Regardless, the AAO does not dispute the general proposition that good faith explanations should be accepted; however, the information that the petitioner has submitted in support of its claims does not confirm its statements.

In this instance, the documentary evidence does not support the petitioner's claims regarding the beneficiary's position being a recognized religious occupation within its denomination.

First, although the petitioner has submitted copies of the petitioner's Statement of Mission and Employee Handbook, none of these documents specify that a science teacher must be a Mennonite. The "Teacher Application" submitted simply asks for information regarding what denomination the applicant is a member of and whether he or she is a member or nonmember. There is no indication that the applicant must be a member of the Mennonite denomination. Rather, the application appears to reflect that other denominations are accepted.

In fact, the record does not establish that the beneficiary is a member of the Mennonite denomination. Instead, the record contains a November 18, 2009 letter from Senior Pastor [REDACTED] [REDACTED] affirming that the beneficiary was a member of the [REDACTED] since 2005. The AAO finds that this letter causes additional questions regarding whether the beneficiary has been a member of the petitioning organization's denomination for the two-year period preceding the petition's filing date according to 8 C.F.R. § 204.5(m)(1).

The regulation at 8 C.F.R. § 204.5(m)(5) defines a religious denomination as a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;

- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

Under the above definition, Christianity may be a single religion, but it is not a single religious denomination. Rather, it incorporates numerous denominations, some of which have creeds and doctrines that are incompatible or distinct from those of other Christian denominations.

The regulatory definition of a religious occupation at 8 C.F.R. § 204.5(m)(5) requires that the beneficiary's "duties must . . . be recognized as a religious occupation within the denomination." If the petitioner allows members of other denominations to teach at its school, then the position lacks recognition as an occupation at the denominational level.

The fact that the petitioner requires "sympathy with" Christian-centered beliefs is not sufficient to demonstrate that the Mennonite denomination recognizes the beneficiary's position as a religious occupation.

It bears emphasis that the question is not whether the petitioner's school teaches its Christ-centered beliefs and creed to its students, but whether the petitioner's Mennonite denomination considers a science instructor to be a religious occupation. Although counsel claims that the beneficiary's position of science instructor is indeed a Christian religious occupation, she has failed to substantiate such claims with evidence regarding this specific position. 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).

It may well be that the Mennonite denomination considers a science instructor to be an occupation, always or often filled by a full-time religious worker. Nevertheless, it is the petitioner's burden to show as much. The petitioner submitted no persuasive evidence in this regard, and therefore the AAO agrees with the director that the petitioner has not met its burden of proof to show that a science instructor is a recognized religious occupation within its Mennonite denomination.

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.