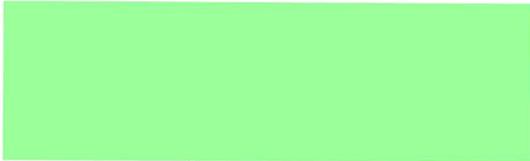


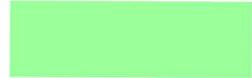


U.S. Citizenship
and Immigration
Services

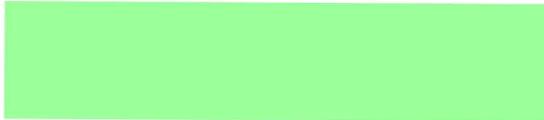
(b)(6)



DATE: JAN 30 2013 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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner is a Christian church of the Southern Baptist 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 religious instructor (the beneficiary's title has changed repeatedly over the course of this proceeding). The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the Southern Baptist denomination recognizes the beneficiary's position as a religious occupation.

In response to the certified denial, the petitioner submits a statement from its pastor, [REDACTED]

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, 2015, 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, 2015, 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).

RELIGIOUS OCCUPATION

The first issue in the certified decision is whether the petitioner intends to employ the beneficiary in a religious occupation. "Religious occupation" means 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.

8 C.F.R. § 204.5(m)(5). The petitioner filed the Form I-360 petition on July 26, 2006. In an accompanying statement, Pastor [REDACTED] listed the religious instructor's duties:

- 1) prepares for Bible study sessions; 2) teaches Bible to existing and potential members of our church; 3) leads prayer session for Bible study group; 4) leads evangelism class; 5) provides religious counseling; 6) encourages students to attend Bible study classes; 7) visits students for conference and providing help; and 8) plans and directs various education programs of our church.

An accompanying schedule, also prepared by Pastor [REDACTED], provided details about teacher's meetings, counseling sessions, Bible teaching and other activities, including ten hours of duties described as "administrative."

In a request for evidence (RFE) dated December 11, 2006, the director instructed the petitioner to provide additional details about the position offered to the beneficiary. The petitioner's response included tax documents but nothing further about the beneficiary's position.

The director issued a second RFE on March 14, 2007, again requesting details about the position. In response, Pastor [REDACTED] provided a somewhat revised list of responsibilities:

- 1) prepares for Bible study sessions; 2) teaches Bible to existing and potential members of our church; 3) leads prayer session for Bible study group; 4) provides religious counseling; 5) visits members for providing help; 7) [sic] plans and directs various education programs of the church.

The petitioner's response included copies of the beneficiary's "ministry schedules" for 2004, 2005 and 2006. The 2004 and 2005 documents have some similarities to the schedule submitted previously. The 2006 schedule has essentially the same content as the schedule submitted previously, but is clearly not a photocopy of the earlier document.

The 2006 schedule specified that the petitioner led meetings of "18 teachers & volunteers." On several occasions, when called upon to list or identify its paid employees, the petitioner identified no other teachers. Therefore, most of the petitioner's religious instructors are unpaid volunteers.

The director denied the petition on November 6, 2007, based in part on a finding that the petitioner had not shown that the beneficiary's duties relate to a traditional religious function, or are usually performed by paid employees rather than volunteers. The petitioner appealed the decision, claiming that it intended to employ the beneficiary as a minister of education, but initially described the beneficiary as a "Religious Instructor instead of Minister of Education" based on legal advice.

On December 11, 2008, the AAO remanded the petition to the director for a new decision based on revised regulations. The director issued a new RFE on December 28, 2009, instructing the petitioner to provide details about the beneficiary's position and to "[s]ubmit documentary evidence that the governing body, [REDACTED] recognizes the beneficiary's position as directly related to the religious creed of the denomination. Also submit documentation showing how the governing body, [REDACTED], defines the beneficiary's position."

In response, the petitioner executed an employer attestation indicating that the beneficiary:

- 1) prepares for Bible study sessions;
- 2) teaches Bible to existing and potential members of our church;
- 3) leads prayer session for Bible study group;
- 4) provides religious counseling;
- 5) visits members for providing help;
- 7) [*sic*] plans and directs various education programs of the church; and
- 8) leads children's worship services.

Pastor [REDACTED] stated: "The job title of the beneficiary is Director of Children [*sic*] Christian Education Department and Church Office Secretary." Yet another version of the beneficiary's work schedule included several revisions, including daily "Dawn Prayer Meetings" beginning at 5:50 a.m. No previous schedule showed any duties before 8:00 a.m. Some of the listed duties appear to be inherently secular, such as scheduling visitations, "church office works," and helping "to manage the language classes." These duties, together, occupied nine and a half hours of the beneficiary's weekly schedule.

Pastor [REDACTED] stated: "The beneficiary's role at the church is traditionally recognized by Southern Baptist Convention," but the petitioner submitted no evidence to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner's response included a general letter of support from [REDACTED], senior church planting strategist with [REDACTED]. The letter did not mention the

beneficiary or her position, and thus it did not establish denominational recognition of the petitioner's position as a religious occupation.

The director denied the petition on March 11, 2010, and certified the decision to the AAO. The director stated:

The petitioner was clearly advised to submit documentary evidence that the governing body, [REDACTED], recognizes the beneficiary's position as directly related to the religious creed of the denomination. The petitioner was also requested to submit documents showing how the governing body defines the beneficiary's position.

The director acknowledged the petitioner's claim of denominational recognition, but found that "the petitioner has not substantiated this claim." The director noted that some of the beneficiary's duties are admittedly administrative, and found that what remained – including prayer meetings, leadership seminars, and counseling – "are vague and an assortment of related and unrelated duties" that did not add up to a single, coherent job description.

In response to the certified denial notice, Pastor [REDACTED] states that the church "desperately needs another full time minister who can assist [the pastor] not only [with] the children's and educational ministries but also church administration and office works." This statement does not address the director's finding that the petitioner failed to document denominational recognition of the beneficiary's position as a religious occupation. The petitioner's own evidence indicates that most of its instructors are unpaid volunteers, and that the beneficiary's status as a paid employee rests at least in part on her performance of secular, administrative duties as the "Church Office Secretary."

There are, undoubtedly, religious elements in the beneficiary's stated duties with the petitioning entity. Nevertheless, the record indicates that religious instruction, by itself, is not grounds for paid employment with the petitioning church, which has claimed 18 teachers but submitted tax records showing, at most, four employees. The changing nature of the beneficiary's duties, as shown in the various schedules, suggests that many of those duties are not integral to the beneficiary's position but, rather, have been added on in order to justify a full-time work schedule. The AAO will affirm the director's un rebutted finding that the petitioner has not shown that the beneficiary's position meets all of the regulatory requirements of a religious occupation.

PAST EMPLOYMENT

The second and final stated ground for denial concerns the beneficiary's past experience. The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11)(i) states that, if the alien was employed in the United States during the two years immediately preceding the filing of the application and received salaried compensation, the petitioner must submit Internal Revenue Service (IRS) documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.

The petitioner must establish that it continuously employed the beneficiary during the two years immediately preceding the petition's July 26, 2006 filing date.

The record contains copies of tax and payroll documents for the years preceding the filing of the petition. IRS Form W-2 Wage and Tax Statements show that the petitioner paid the beneficiary \$18,000 in 2004, the same amount in 2005, and \$25,200 in 2006.

Based on evident alterations on an IRS Form 941 Employer's Quarterly Federal Tax Return for the quarter ending on June 30, 2005, the AAO issued a notice of derogatory information to the petitioner on July 24, 2012. The petitioner's response to the AAO's notice included a letter from the accountant responsible for preparing the return, explaining that the accounting firm could not find the original return and therefore re-created it using the same information. More importantly and more persuasively, the petitioner submitted IRS transcripts, showing that the petitioner filed an IRS Form 941 return for the quarter ending on June 30, 2005, that contained the same information shown on the re-creation in the record.

In the December 2009 RFE, the director issued the following instruction to the petitioner:

Submit documentary evidence to show that the beneficiary's services are needed. Please ensure that the evidence addresses the following factors:

- Number of volunteer and paid ministers and staff serving the petitioner's church
- Size of the congregation, submit a current membership directory verifying the total number of actual congregants.
- Specific duties which the beneficiary will be undertaking vs. specific duties of other staff
- Provide a description, including location and times of your religious services and ministries
- Has the church always had the services of a minister or staff to perform the duties that the beneficiary will be undertaking? If not, what circumstances created a need for the beneficiary's services?

In the RFE, the above passage appeared under the heading "Information about the Religious Organization."

In response, the petitioner identified only paid employee (Pastor [REDACTED]) other than the beneficiary, indicating a reduction in staff since 2006 when tax documents identified four employees. Pastor [REDACTED] claimed that the petitioning organization also had four volunteer workers, and "180 total member[s] including 120 adult members and 60 youth and children." Pastor [REDACTED] asserted that all religious activities take place at the church on [REDACTED] which the petitioner used to rent from [REDACTED] but purchased in 2008. The record documents the purchase. Pastor [REDACTED] provided a schedule of activities at the church, including Sunday worship services at 11:00 a.m. and 2:00 p.m. and various prayer meetings, Bible studies, and other activities.

The director, in the certified denial notice, noted that the petitioner had not answered the director's questions: "Has the church always had the services of a minister or staff to perform the duties that the beneficiary will be undertaking? If not, what circumstances created a need for the beneficiary's services?" The director also stated that "it is still unclear how many of the 60 members are in fact children, to whom the beneficiary's proffered position directs [*sic*]." The director further noted the reduction in the petitioner's paid staff, and concluded: "Without clarification, the above inconsistencies suggest that the beneficiary may not have been employed on a full time basis."

Pastor [REDACTED] statement in response to the certified decision does not directly address the director's findings, instead indicating that the petitioner "desperately needs another full time minister." Pastor [REDACTED] states that the beneficiary is the only remaining beneficiary from a group of petitions that the petitioner had filed previously. Pastor [REDACTED] asserts that one beneficiary "left the church for other purpose," while "[REDACTED] recently received permanent residence through her daughter." The implication is that [REDACTED] used to work for the church while the church was pursuing immigration benefits for her, but then ended that employment after becoming a permanent resident through other means. This final assertion by Pastor [REDACTED] does not address the director's concern that the petitions were pretexts for immigration benefits rather than *bona fide* efforts to secure the needed services of religious workers.

Nevertheless, the director did not draw a persuasive connection between doubts about the petitioner's claims and the conclusion that "the beneficiary may not have been employed on a full time basis." It is significant that, when the director first raised the questions in the RFE, the director categorized those questions as relating to "Information about the Religious Organization" rather than factors that cast doubt on the beneficiary's relatively well-documented past experience.

The regulation at 8 C.F.R. § 204.5(m)(11)(i) requires a petitioner to submit IRS documentation of past compensation. The petitioner has submitted such documentation, and the director did not call that documentation into question. The ground for denial, as stated in the certified notice, is vague. The petitioner has submitted sufficient evidence to meet the regulatory requirements relating to the beneficiary's past experience, and will therefore withdraw the director's finding to the contrary. Nevertheless, the petition shall remain denied, due to the un rebutted ground discussed earlier.

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 affirm the denial of the petition.

ORDER: The director's certified decision of March 11, 2010 is affirmed. The petition is denied.