

(b)(6)

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

DATE: APR 03 2015

OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg  
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 sustained.

The petitioner is a regional conference of Seventh-day Adventist (SDA) churches. 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 teacher at [REDACTED]. The director determined that the petitioner had not established that the beneficiary will be employed in a qualifying position. On appeal, the petitioner submits a brief and copies of documents already in the record.

#### APPLICABLE LAW

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).

The regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity;  
or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The regulation at 8 C.F.R. § 204.5(m)(5) includes the following definitions:

*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.

\* \* \*

*Religious worker* means 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.

#### FACTS AND PROCEDURAL HISTORY

The petitioner filed the Form I-360, Petition for Amerasian, Widower, or Special Immigrant, on March 17, 2014. The petitioner stated on the petition that the beneficiary will be employed as a "Christian School Teacher (Grades 4-6)" with the following duties:

Teach Bible Studies and incorporate Seventh-day Adventist doctrine and all Biblical concepts in teaching curriculum courses to ages 9-12 pursuant to Christian school curriculum as required by NAD [North American Division of Seventh-day Adventists] educational philosophy, which requires that Bible study and Christian values be interwoven throughout the entire curriculum; Undertake pastoral membership to pupils in accordance with Seventh-day Adventist faith beliefs and tenets; Lead baptismal class, worship and chapel sessions.

In a March 11, 2014, letter accompanying the petition, the petitioner described the job duties of the proffered position as instructing students on the doctrines of the Seventh-day Adventist faith and philosophy, teaching Christian principles in the classroom, and leading baptismal classes, school worship, and chapel sessions. In response to the director's Request for Evidence (RFE), the petitioner specified that the proffered position of Seventh-day Adventist Christian Teacher requires approximately thirty-eight hours per week, which consists of creating, planning, and teaching classes in Bible Studies, Integrated Science, and other subjects using the New York State and North American Division of Seventh-day Adventists curriculum. The petitioner also included a copy of the beneficiary's weekly schedule and examples of lesson plans.

The director denied the petition on July 23, 2014, finding that the petitioner had not established that the proffered position qualifies as a religious occupation. The director stated that, according to the submitted evidence, "the time the beneficiary spends in school teaching the arts, sciences, Physical Education, and English clearly exceeds the time spent in teaching Bible and Worship." The director therefore found that the duties of the proffered position are "secular" and "predominantly administrative."

On appeal, the petitioner argues that the director's comparison of the hours spent on "secular" versus "religious" duties is overly simplistic and that the analysis should instead take into account whether the duties of the position as a whole are consistent with the religious function being performed, in this case "evangelism." The petitioner also contends that the class subjects deemed secular by the director are nonetheless taught in a way that involves inculcating the beliefs of the denomination.<sup>1</sup>

#### ANALYSIS

We find that the petitioner has established that the duties of the proffered position of Seventh-day Adventist Christian Teacher are primarily related to the function of evangelism of students, and that the administrative or secular duties are incidental to this function. Letters from the petitioner probatively described that the position involves teaching Christian principles based on the doctrines of the Seventh-day Adventist faith and philosophy to elementary and middle school students in all

<sup>1</sup> Also in support of its position, the petitioner cites decisions by the Board of Immigration Appeals (BIA), as well as decisions issued by the United States Court of Appeals Third Circuit and District of Columbia Circuit. All of the cited decisions predate the current regulations, which were published on November 26, 2008. Accordingly, the cited decisions interpret regulations which are no longer in effect and are not relevant to the instant case.

subject areas, including but not limited to: baptismal classes, school worship, chapel sessions, and Bible studies. In addition, the weekly schedule in the record provides a detailed account of the job duties for the proposed position, showing, among other things, that the beneficiary would teach Bible studies for 3 ½ hours per week and Chapel for 55 minutes per week. Although the weekly schedule shows the beneficiary would also teach other classes that the director found to be secular, such as English and Science, the lesson plans in the record establish that at least a portion of each class is, in fact, devoted to teaching religion.

Specifically, the lesson plans show that every subject includes a “Faith & Learning” component, frequently including a Biblical Psalm or citation to the Bible. For example, a lesson plan for a Physical Education class included, “Understand and practice all we can to have healthy bodies and minds 1 Cor 10:31,” a lesson plan for a Science class included, “Dependability 1 Tim 6:20,” and a lesson plan for an English class included, “Compare and contrast two named Bible characters.” Therefore, the record shows that the duties of the proffered position of Seventh-day Adventist Christian Teacher are primarily related to and involve the carrying out of the religious creed and beliefs of the Seventh-day Adventist denomination. The petitioner has established that the proffered position meets the regulatory definition of a religious occupation, and we will withdraw the director’s findings on this issue.

#### CONCLUSION

As discussed above, the petitioner has overcome the stated basis for the denial decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has met that burden. Accordingly, we will withdraw the director’s denial decision and sustain the appeal.

**ORDER:** The appeal is sustained. The petition is approved.