U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-M-B-S-, INC. DATE: OCT. 9, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner, a tax exempt educational institution, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a "Choir/Children's Ministry Director." *See* Immigration and Nationality Act (the Act) § 203(b)(4), 8 U.S.C. § 1153(b)(4). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks on behalf of the Beneficiary makes visas available to ministers and non-ministers in religious vocations and occupations seeking to immigrate to or adjust status in the United States for the purpose of performing religious work in a full-time compensated position. The Director determined that the Petitioner did not establish that it satisfied the bona fide religious organization requirements at 8 C.F.R. § 204.5(m)(8)(i) – (iii) and that the Beneficiary will be coming to the United States to work in a full-time position in accordance with 8 C.F.R. § 204.5(m)(2). On appeal, the Petitioner submits a brief with additional evidence. For the reasons discussed below, while the Petitioner has shown that it is a qualifying organization, it has not demonstrated that the Beneficiary is coming to work in a full-time position.

I. RELEVANT LAW AND REGULATIONS

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)(3) provides that, in order to be eligible for classification as a special immigrant religious worker, a beneficiary must be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States. The regulation at 8 C.F.R. § 204.5(m)(5) provides the following definitions:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the [Internal Revenue Service (IRS)] confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

Religious denomination means 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.

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code . . .

Regarding evidence of the Petitioner's tax-exempt status, the regulation at 8 C.F.R. § 204.5(m)(8) requires the following:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that

> the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the Petitioner along with the petition.

Finally, 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, a beneficiary 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.

II. ANALYSIS

A. Qualifying Organization

The Petitioner initially submitted a letter from the Internal Revenue Service (IRS) reflecting that the organization was tax exempt with a public charity status under the Internal Revenue Code at section 170(b)(1)(A)(ii), specifically as an educational organization. In a request for evidence (RFE), the Director invited the Petitioner to submit more information to show its bona fides as a nonprofit religious organization. In response, the Petitioner submitted similar documents and also established that it was affiliated with what is now the The Petitioner is a direct branch ministry of this church and shares numerous associating factors, including its address. The Director denied the petition, finding that the Petitioner had met the requirements of 8 C.F.R. § 204.5(m)(8)(iii)(A) – (C), but that it had not met the requirements of this same regulation at subparagraph (D) relating to the religious denomination certification. Specifically, the Petitioner had signed the religious denomination certification, when the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, instructions require an authorized member of the religious organization to sign the certification. On appeal, the Petitioner submits a revised religious denomination certificate signed by the affiliated religious organization in accordance with the regulation at 8 C.F.R. § 204.5(m)(8)(iii)(D), and has therefore overcome the Director's concern. As such, the Petitioner has demonstrated that it is a bona fide organization that is affiliated with a religious organization.

The Director also concluded: "[A]s the [P]etitioner had indicated that it does not belong to a specific denomination and is a non-denominational organization, it is not possible that the [P]etitioner is affiliated to any religious denomination." The regulatory definition of religious denomination for the classification sought is broad, including those organizations with a recognized common creed or statement of faith shared among the denomination's members; a common form of worship; or common religious services and ceremonies. Here, the church founded the petitioning school and shares employees and members with the Petitioner. The Petitioner's students are required to attend

the church's services. The shared doctrine, form of worship, and religious services represent a religious denomination as defined in the relevant regulation. 8 C.F.R § 204.5(m)(5). For the reasons outlined above, a review of the record reflects that the Petitioner submitted sufficient documentary evidence establishing that it is affiliated with a religious denomination as defined in the regulation and the Director's determination on this issue is hereby withdrawn.

B. Full Time Religious Occupation

The Petitioner initially indicated on the Form I-360 that the title of the position it was offering to the Beneficiary was "Choir/Children's Ministry Director." The Director's RFE concluded that the duties of the offered position were not clear, nor was it evident that the position would require 35 hours of work per week. The Petitioner's response included evidence that focused on the choir director position, as well as documents discussing duties unrelated to that occupation.

The following titled letters from the Petitioner's director, relate to the choir director position: "Traditional Religious Function"; "How the [B]eneficiary meets the requirements"; and "Job Description: Choir Director." The Petitioner also provided letters that listed the Beneficiary's duties, but did not explain how the duties are part of the choir director position. For example, the letter titled "Work History" stated that the Beneficiary's "main position is Choir Director although she is involved and is directly responsible for many various projects." In addition to the duties and hours relating to the position of a choir director, also listed duties that appear unrelated. For instance, included the following duties: "Coordinating and supervising the teachers['] schedule" for seven hours per week, and "Directing and co[o]rd[inat]ing] the learning of biblical and religious texts" for three hours per week. The total weekly hours associated with the duties of a choir director are only 30 hours per week.

In letter titled, "The duties of the Proffered Position," he listed 13 job titles, only two of which relate to choir direction. The other title on the petition, Children's Ministry Director, does not appear among the positions. Rather, they include Weekly Scripture Coordinator, Bible Quiz Manager, Missionary Preparation Course & Children's Ministry Teacher, Coordinator of Homiletics Teaching Week, Sunday School Teacher's Conference Coordinator/Instructor, Kids Camp Director, Slavic Theology Seminary Coordinator/Manager, Teachers Lecture Coordinator, Test Writer, Teachers Schedule Supervisor, and Graduation Rehearsal Coordinator. The number of hours per week for the choir director duties are between seven and twenty, with additional hours from June to July. With respect to 10 of the job titles, explained the manner in which the position relates to a traditional religious function. The Director considered only the choir director position, construing the additional job titles to be separate and distinct. On appeal, the Petitioner asserts that the Director overlooked half of the Beneficiary's position in her decision.

The regulation at 8 C.F.R. § 204.5(m)(2) requires that the Beneficiary be "coming to the United States to work in a full time . . . compensated position" and it defines a religious worker to mean "an

occupation" in which the duties are "recognized as a religious occupation within the denomination." *See* 8 C.F.R. § 204.5(m)(5).[1] While we recognize that many jobs have at least some unrelated duties, the Petitioner has not established that we should consider 13 separate job titles as a recognized religious occupation. As the Petitioner has not shown that at least 35 hours of the Beneficiary's duties reasonably relate to the choir director position, the Petitioner has not demonstrated that the Beneficiary will perform full time work in the position of choir director.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated that the Beneficiary will work in a full time position.

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). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-M-B-S-, Inc.*, ID# 13998 (AAO Oct. 9, 2015)

[1] In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *Cf. Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).