



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-C-C-

DATE: FEB. 26, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as its “Minister of Christian Education.” *See* Immigration and Nationality Act (the Act) § 203(b)(4), 8 U.S.C. § 1153(b)(4). This classification allows non-profit religious organizations, or their affiliates, to employ foreign nationals as ministers or in other religious occupations or vocations in the United States.

The Director, California Service Center, denied the petition. The Director concluded that the job duties of the proffered position were secular in nature and not related to a traditional religious function.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that two prior R-1 nonimmigrant religious worker petitions filed by the same petitioning church for the same Beneficiary and the same job were approved. The Petitioner states there have been no material change in facts and that the proffered position is clearly a religious occupation.

Upon *de novo* review, we will sustain the appeal.

#### I. RELEVANT LAW AND REGULATIONS

The Petitioner seeks to employ the Beneficiary as its Minister of Christian Education. The Act allows foreign nationals to immigrate to the United States as ministers, or in other religious occupations or vocations, under certain criteria. In this case, the Director concluded that the proffered position did not meet the regulatory definition of a religious occupation because the job duties did not primarily relate to a traditional religious function pursuant to 8 C.F.R. § 204.5(m)(5).

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, 2016, 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, 2016, 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]) 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)(5) provides, in pertinent part, the following definition:

*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.

## II. ANALYSIS

On September 8, 2014, the Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, seeking to classify the Beneficiary as a special immigrant religious worker to perform services as its Minister of Christian Education. The Petitioner stated that the Beneficiary has

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been working full time in this position as an R-1 religious worker for almost five years. It submitted evidence including, but not limited to: the proffered position's job description; the church's constitution; financial documents showing the Beneficiary's employment with the church; church brochures listing the Beneficiary as a pastor; a copy of a Certificate of License from the Petitioner to the Beneficiary authorizing her to preach in the church; copies of her degree in Master of Theology; her transcript; a graduate teaching diploma from the [REDACTED] Theological Seminary; and copies of Bible study materials prepared by the Beneficiary during her employment at the church.

The Director issued a request for evidence (RFE), requesting, in part, additional documentation of the proffered position's job duties. In response, the Petitioner submitted, among other things, charts detailing the hourly and weekly duties of the proffered position and a list of the number of volunteers who report to the Beneficiary.

The Director denied the petition, concluding that the Petitioner did not establish that the job duties of the proffered position related to a traditional religious function. The Director quoted the job duties as listed by the Petitioner and concluded that many of the duties were "clearly secular and can be performed by any dedicated volunteer of the organization or a clerical office employee." According to the Director, the Petitioner "admit[ted] the position will be performed from the church office and its duties are largely that of an aide or liaison." The Director further stated that "[c]alling on or visiting newcomers to the congregation clearly has no traditional religious function or bearing [and] is a duty that can be performed by any member of a voluntary welcoming committee."

On appeal, the Petitioner contends that the Beneficiary has already been approved twice as an R-1 religious worker for the same position. It states that the job description it submitted is clearly religious in nature, including training Christian education teachers, teaching Sunday school, preparing Bible study materials, and providing pastoral care. In addition, the Petitioner asserts that the Beneficiary has a Master's degree in theology and was paid approximately \$45,000 in 2013 and 2014 as a full-time religious worker. The Petitioner submits, among other things, a copy of its Form I-129, Petition for a Nonimmigrant Worker, from 2009 showing the same job title and description of the proposed daily duties. It also submits a copy of its Form I-129 from 2012 requesting that the Beneficiary's previously approved full-time employment be extended.

Regarding any previously approved Form I-129 petitions, U.S. Citizenship and Immigration Services (USCIS) is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir. 2007) ("The mere fact that the agency, by mistake or oversight, approved a specialty occupation visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa.").

Nonetheless, in this case, after a careful review of all of the evidence in the record, we find that the Petitioner has established the proffered position meets the regulatory definition of a religious occupation. The record shows that the church has a membership of approximately 500 congregants

and attendance records show that approximately 250 individuals attend the “Chinese worship” each week while another 120 individuals attend “English worship” each week. On the Form I-360, the Petitioner stated it has eight employees and according to a list of paid positions in the record, those employees are listed as: Senior Pastor, English Pastor, Mandarin Pastor, Christian Education Minister, Children Ministry, Youth Pastor, Administration Director, and Church Secretary. A copy of the church’s 2014 budget shows that seven employees are full-time and one employee works part-time. Church brochures list the Senior Pastor and the five other pastoral staff, naming the Beneficiary as the Christian Education (C.E.) Pastor. A list of volunteers shows that the church has a total of 178 volunteers, including 20 volunteers in the “Adult Christian Education Department,” 10 volunteers on the “hospitality team,” and eight volunteers on the “usher and welcome team.”

The church’s constitution discusses the qualifications, responsibilities, and terms of employment for its Senior Pastor and other pastoral staff, including “Christian education directors.” The job description for the proffered position states that its objective is to “[a]ssist the senior pastor to minister to the congregation . . . to lead believers to become devoted followers of Jesus Christ.” A chart of the proffered position’s job duties lists 20 different items with detailed descriptions. For example, item number 8 states that the Beneficiary will prepare and teach Sunday school for fifteen hours per week. Item number 19 indicates that the Beneficiary will lead a student fellowship for Cantonese speakers nine hours per week. Item numbers 12-17 state that the Beneficiary will preach the Sunday worship service three or four times a year, provide pastoral counseling as needed, perform wedding and funeral services, and officiate baptisms and communion. In addition, item number 4 states that the Beneficiary will “[d]evelop, recruit, motivate, and equip Bible teachers and Bible Study leaders,” providing them with outlines for Bible studies, for four hours per week. A separate document in the record indicates that the Beneficiary will have a total of 30 volunteers reporting to her, including Sunday school teachers, Cantonese students fellowship advisors, and Cantonese small group leaders.

Moreover, the record includes a copy of a Certificate of License granted by the Petitioner to the Beneficiary, authorizing her to preach in the church. The record also contains a history of the Beneficiary’s religious work, specifying that from June 2012 until August 2014, she led weekly Bible studies and a Cantonese Students Fellowship. The Petitioner has included a sample Bible study curriculum and several weekly Bible lessons prepared by the Beneficiary in both English and Chinese. These documents are consistent with the Petitioner’s contention that the Beneficiary has been performing religious work as the Minister of Christian Education pursuant to her R-1 visa, and that she will continue the same work as a special immigrant religious worker.

We find that the job duties of the proffered position in this case primarily relate to the traditional religious function of evangelism and clearly involve inculcating or carrying out the religious creed and beliefs of the denomination. Although some aspects of the position may be administrative in nature and could be performed by volunteers, such as welcoming newcomers to the church and serving as a staff liaison, 8 C.F.R. § 204.5(m)(5)(C) explicitly permits limited administrative duties that are incidental to the religious work. We do not find that the proffered position is primarily administrative or clerical, but rather, is primarily religious in nature. Accordingly, the Petitioner has established that the proffered

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position is a religious occupation as defined in 8 C.F.R. § 204.5(m)(5). The Petitioner has established that the Beneficiary will be working full time in a religious occupation pursuant to section 101(a)(27)(C)(ii)(III) of the Act and 8 C.F.R. § 204.5(m)(2)(iii), and as defined in 8 C.F.R. § 204.5(m)(5). We withdraw the Director's finding to the contrary.

### III. CONCLUSION

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 established that the proffered position is a religious occupation. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.

Cite as *Matter of A-C-C-*, ID# 15622 (AAO Feb. 26, 2016)