



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

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

MATTER OF G-N-Y-C-O-S-

DATE: SEPT. 15, 2016

CERTIFICATION 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 a literature evangelist. *See* Immigration and Nationality Act (the Act) section 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, in religious vocations, or in other religious occupations, in the United States.

The Director of the California Service Center denied the petition, finding that the Petitioner did not establish its ability and intent to compensate the Beneficiary without using monies obtained by the Beneficiary. The Director also found that the Petitioner did not establish that the proffered position qualifies as a religious occupation. Because of the complex issues in the case, the Director certified the decision for our review.

Upon *de novo* review, we will affirm the director's decision denying the petition. As explained below, given the specific facts of this case, we find that the Petitioner has established that the proffered position meets the regulatory definition of a religious occupation. However, we find no error with the Director's conclusion that the Petitioner did not establish that it will compensate the Beneficiary without using monies obtained from the Beneficiary.

**I. RELEVANT LAW AND REGULATIONS**

Non-profit religious organizations may petition for foreign nationals to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organizations must establish that the foreign national beneficiary meets certain eligibility criteria, including membership in a religious denomination and continuous religious work experience for at least the two-year period before the petition filing date. Foreign nationals may self-petition for this classification. *See generally* section 203(b)(4) of the Act (providing 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)).

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

- (1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.
- (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.
- (3) 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, in pertinent part, 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.

(b)(6)

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The regulation at 8 C.F.R. § 204.5(m)(7) requires the prospective employer to specifically attest to:

(vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;

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(xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and

(xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

The regulation at 8 C.F.R. § 204.5(m)(10) discusses the requirements for compensation and states:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the religious worker petition seeking to classify the Beneficiary as a special immigrant religious worker on July 10, 2012.<sup>1</sup> The Director issued a request for evidence (RFE) seeking, among other things, information about the Petitioner's compensation to the Beneficiary and the proffered position's job duties. The Petitioner submitted a brief and additional evidence in response to

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<sup>1</sup> On August 15, 2011, the Petitioner filed a religious worker petition (receipt number [REDACTED] for the same Beneficiary, which was denied on March 21, 2012. On October 15, 2013, the Petitioner filed another religious worker petition (receipt number [REDACTED] for the same Beneficiary, which was denied on February 25, 2014. Neither of these decisions has been appealed. The only decision before us is the Director's certification to us for the religious worker petition, receipt number [REDACTED]

the RFE, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition, concluding that the proffered position is a self-supporting position in which most of the Beneficiary's income would be derived from selling literature, rather than from compensation provided by the Petitioner. Among other things, the Director noted inconsistencies between the amount stated on the Beneficiary's IRS Forms 1099-MISC, Miscellaneous Income, and his income tax statements.

The Director also concluded that the proffered position does not qualify as a religious occupation. She found that the Petitioner established that the sale of printed matter by literature evangelists has the primary objective of spreading the message and religious beliefs of the denomination. However, the Director concluded that the Petitioner did not establish that the job duties of the proffered position do not consist primarily of sales or attempted sales, or, in other words, raising funds. As such, the Director concluded that because fundraising was not an incidental job duty, the Petitioner did not establish that the proffered position meets the regulatory definition of a religious occupation.

Recognizing unusually complex and novel issues in the case, the Director certified the decision for our review. She notified the Petitioner that it had thirty days to submit additional evidence for our consideration. To date, we have not received any additional evidence and, therefore, we review the matter on the record that was before the Director.

### III. ANALYSIS

#### A. Religious Occupation

The definition of "religious occupation" in 8 C.F.R. § 204.5(m)(5) contains subparts (A), (B), (C), and (D). In this case, the Director specifically found that the Petitioner established that it met the requirements of subparts (A) and (B), but not (C).<sup>2</sup> As stated above, subpart (C) requires the Petitioner to establish by a preponderance of the evidence that the job duties of the proffered position are not "primarily administrative or support" in nature. The regulation gives examples of administrative and support positions, including "janitors, maintenance workers, clerical employees, fund raisers, and persons solely involved in the solicitation of donations." It also specifies that "limited administrative duties that are only incidental to religious functions are permissible."

We agree with the Director that, based on the record in this case, the Petitioner has established that the proffered position of literature evangelist meets subsections (A) and (B). The Petitioner has established that the job duties of the proffered position in this case primarily relate to the traditional religious function of evangelism, clearly involve inculcating or carrying out the religious creed and beliefs of the denomination, and that the position is recognized as a religious occupation by the General Conference of Seventh-day Adventists. However, contrary to the Director's conclusion, we also find that the Petitioner has established it met the requirements of subsection (C) and that the proffered position is not primarily administrative or supportive in nature.

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<sup>2</sup> Subpart D is not at issue in this case.

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The record includes, but is not limited to: letters from the president of the church, [REDACTED] documentation from the General Conference of the Seventh-day Adventist's website; summary reports from the publishing ministries department; monthly and year-end reports for the Beneficiary; and a copy of the Beneficiary's church identification card. According to [REDACTED] literature evangelists are gospel workers of the church and conduct a wide range of missionary activities including, but not limited to: making missionary visits to people's homes; disseminating religious literature; praying with individuals and families; providing spiritual guidance to congregants who are unable to attend church services; providing lectures and instruction on church liturgy; visiting the sick; comforting the bereaved; and providing counseling. [REDACTED] contends that disseminating religious literature is not the primary job responsibility of literature evangelists who not only sell the literature, but also distribute it for free. He states that they are required to report their number of hours worked and other statistics, as well as attend regular meetings with their supervisors. [REDACTED] also maintains that the proffered position does not require the solicitation of donations. He contends that unlike other churches that employ its members to visit homes, the Seventh-day Adventist church only allows persons who have received training and are issued credentials by the church to act as missionaries. According to [REDACTED] the Beneficiary possesses valid credentials and has served as a literature evangelist for the petitioning organization since March of 2009.

Documentation from the church's website that are in the record support [REDACTED] contention that literature evangelists are gospel workers who conduct a wide range of missionary activities. The Petitioner submitted a copy of the General Conference of Seventh Day Adventists' "Philosophy of the Literature Ministry," which acknowledges that "[w]hile the Publishing Ministry uses selling as a medium of outreach, the ultimate objective is sharing the Gospel through literature to see precious souls saved into God's kingdom." See *Philosophy of the Literature Ministry* at 2, <http://publishing.gc.adventist.org/files/pdf/Philosophy%20of%20Literature%20Ministry.pdf>.

A copy of "Role of the Local Church in the Publishing Ministry" in the record similarly describes the church's "very great potential in evangelism through the circulation of [church] literature" and emphasizes "reaching out to all classes of people" through selling or giving away free literature. See *Role of the Local Church in the Publishing Ministry* at 1, <http://publishing.gc.adventist.org/files/pdf/Role%20of%20the%20Local%20Church%20Publishing%20Ministries.pdf>. It also states that historically, literature evangelists "took a major part in the church's lay activities, along with home visitation, praying for the sick, community services, and others." *Id.* In addition to selling religious literature, it listed other outreach activities as including giving away free literature, enrolling individuals in the Voice of Prophecy, inviting people to attend church services, offering prayers, and helping others develop an interest in bible studies. *Id.* at 7.

In addition, a copy of the church's "Quinquennial Strategic Plans" in the record lists several goals for the publishing ministries department, such as "selling and sharing" religious literature for spiritual growth at low-cost and in local languages/dialects, developing new methods in personal evangelism with the goal of recommending at least one soul for baptism each year, and negotiating with colleges and universities to offer degrees in literature ministry and a Master of Publishing Administration. See *Quinquennial Strategic Plans, Publishing Ministries Department, General Conference of Seventh-day*

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*Adventist, 2011-2015* at 2-3, 6-7, <http://publishing.gc.adventist.org/files/pdf/Department%20Strategic%20Plans%202011-2015.pdf>. Therefore, the evidence in the record supports [REDACTED] contention that the primary objective of literature evangelists is not merely to sell religious literature, but to “save souls.”

To the extent the Director cited from the three aforementioned documents for the proposition that the job duties of literature evangelists consist primarily of sales or attempted sales, we find that the Director has interpreted the documents too narrowly, without regard to the documents as a whole. For instance, citing the first two documents, the Director found that literature evangelists are “self-supporting” church workers whose only source of livelihood is from proceeds of the church’s religious literature, which they sell to the public. The Petitioner does not dispute this fact. Rather, it contends that the job duties of the proffered position are varied and do not primarily involve fundraising. Similarly, the Director quoted goal number six from the church’s Quinquennial Strategic Plans, which emphasizes increasing sales revenues. However, she did not credit the other goals specified in the strategic plans, as described above. A full review of the documentation in the record shows that the job duties involve more than merely selling religious literature.

Moreover, the Beneficiary’s monthly and year-end reports in the record show that, at the very least, he was engaged in activities that were not primarily sales or attempted sales. According to his 2009 year-end report, he visited a total of 279 homes, gave away 397 pieces of free literature, offered 272 prayers, and conducted 57 bible studies. Therefore, the record shows that the Beneficiary offered almost as many prayers as homes he visited in 2009.

Likewise, the record shows that in December of 2012, and January and February of 2013, the Beneficiary gave away more free literature than he sold, and conducted more prayers than homes he visited. Specifically, his December 2012 monthly report shows that he visited 140 homes and sold 123 books/magazines, while also giving away 183 pieces of free literature, offering 165 prayers, and conducting 44 bible studies. His January 2013 monthly report indicates that while he visited 92 homes and sold 22 books/magazines, he also gave away 172 pieces of free literature, offered 131 prayers, and conducted 7 bible studies. And his February 2013 monthly report shows he visited 104 homes and sold 61 books/magazines, but also gave away 202 pieces of free literature, offered 198 prayers, and conducted 84 bible studies. Therefore, the record shows that although the Beneficiary did, indeed, sell religious literature, he was also significantly engaged in offering prayers and conducting bible studies.

The record also includes a copy of the Beneficiary’s credentials that identify his job title as “Missionary.” According to the 2005 edition of the Seventh-day Adventist Church Manual in the record, only individuals who have been granted credentials are permitted to speak for the church as ministers and gospel workers. In addition, certificates of participation in the record show that the Beneficiary has attended numerous professional training sessions, workshops, and courses in subjects that have nothing to do with sales, such as home health education, depression recovery, and storytelling.

We differ from the Director’s rejection of the Petitioner’s citation to *Tate v. Akers*, 565 F.2d 1166 (10<sup>th</sup> Cir. 1977), and its contention that federal courts have recognized literature evangelists as a religious occupation. In *Tate*, the Tenth Circuit Court of Appeals specifically held that Seventh-day Adventist

literature evangelists were not within the coverage of a municipal ordinance regulating “solicitors” and “peddlers” because “the dominant and primary mission of the colporteur is to spread the gospel and *the sale of church literature is incidental* thereto and does not convert a minister into a peddler.” *Id.* at 1170 (emphasis added). The court described literature evangelism as “a form of ministry” that is a formal program of the Seventh-day Adventist church and the primary means of spreading the church’s gospel and gaining converts. *Id.* at 1169. Therefore, we find the Petitioner’s reliance on *Tate* for the proposition that the sale of literature is incidental to a literature evangelist’s primary job duty of evangelism persuasive.

Indeed, as early as 1943, the U.S. Supreme Court recognized the General Conference of Seventh-day Adventists’ extensive literature ministry in *Murdock v. Pennsylvania*, 319 U.S. 105, 109 n.7 (1943) (internal citations omitted), noting that “Colporteurs are specially trained and their qualifications equal those of preachers.” In *Murdock*, the Court invalidated as unconstitutional a city ordinance that required individuals who were soliciting goods or merchandise of any kind to obtain a license. *Id.* at 117. In that case, the Petitioners were Jehovah’s Witnesses who distributed religious books and pamphlets without a license. *Id.* at 108. The Court recognized the difficulty of distinguishing between a commercial activity and a religious one, stating:

the mere fact that the religious literature is ‘sold’ by itinerant preachers rather than ‘donated’ does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. . . . [A]n itinerant evangelist . . . does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. . . . *It is a distortion of the facts of record to describe their activities as the occupation of selling books and pamphlets.*

*Id.* at 111 (emphasis added). Likewise, in the instant case, it is misreading the facts in the record to conclude that the job duties of the proffered position are primarily administrative or supportive in nature and to describe the position as that of a fund raiser. *Cf. State v. Mead*, 230 Iowa 1217 (1941) (“appellants were not engaged in selling booklets. The alleged sales were merely incidental and collateral to appellants’ main object which was to preach and publicize the doctrines of their order. Indicative of this was the practice of giving booklets to those unwilling to contribute.”); *State v. Meredith*, 197 S.C. 351, 15 S.E.2d 678, 679 (1941) (“The sale of his books and pamphlets . . . was merely incidental to the chief purpose of the defendant, which was the spreading of his religion.”).

In sum, under the facts in this case, the Petitioner has established that the proffered position of literature evangelist is not a salesperson or a fundraiser, but rather, a missionary and evangelist for the church. The job duties of the proffered position are not primarily administrative or supportive in nature. Therefore, the Petitioner has established that the proffered position qualifies as a religious occupation as defined in 8 C.F.R. § 204.5(m)(5). We withdraw the Director’s finding to the contrary.

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## B. Compensation

Nonetheless, the petition remains denied as we find no error with the Director's conclusion that the Petitioner did not meet the requirements of 8 C.F.R. § 204.5(m)(7)(xi) and (xii) in establishing that the Beneficiary will be compensated without using monies obtained from the Beneficiary. The Petitioner stated on the religious worker petition that the Beneficiary will be paid \$525 per week. In [REDACTED] letter initially submitted with the petition, he maintained that "[t]his position does not require the solicitation of donations. As an experienced Literature Evangelist, [the Beneficiary] will earn \$525 per week, plus expenses and commissions."

The Petitioner's initial submission included, among other things, selected pages of an audited financial statement for 2008 and 2009,<sup>3</sup> a copy of the Petitioner's by-laws, and tax documents. The financial statement did not include a line item showing any monies set aside for salaries, and although there were general entries for categories such as "General Administrative and Staff" and "Church Ministries," the Petitioner did not indicate whether these classifications included salaries. With respect to the Petitioner's by-laws, Article X, Section 2 states, "[t]he conference executive committee shall constitute an Employee Remuneration Committee to review annually the salary and expense of all the employees, and set salary rates for the subsequent year." However, the Petitioner did not submit documentation of its past or present "salary rates," or evidence that literature evangelists are considered salaried employees. Regarding the tax documents initially submitted with the petition, the Beneficiary's 2011 Form 1099-MISC, indicated that the Petitioner paid him only \$5,376 in nonemployee compensation, which amounts to \$448 per month. In addition, the Beneficiary claimed \$27,088 in gross receipts on Schedule C (Profit or Loss from Business) of his 2011 IRS Form 1040, U.S. Individual Income Tax Return.

In her RFE, the Director noted, among other things, that the Beneficiary's 2011 Form 1099-MISC was significantly lower than the Beneficiary's total income, suggesting that "a substantial portion of the Beneficiary's income . . . appear[s] to derive directly from sales." The Director also noted that box 9 was checked on the Beneficiary's 2010 Form 1099-MISC, indicating that the "Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale." In addition, the Director quoted from documents submitted by the Petitioner, stating that they contradict the Petitioner's claim that the Beneficiary is a salaried employee. For instance, "Philosophy of Need for the Literature Ministry" states, "Literature Evangelists are self-supporting church workers while giving their full-time service for the Lord. Their only source of livelihood is from proceeds of the literature containing the SDA [Seventh-day Adventist] message, which they sell to the public." Similarly, "Role of the Local Church in the Publishing Ministry" states, "Full-time literature evangelists are self-supporting workers of the Seventh-day Adventist Church who derive their income from commission through the sale of literature and products approved by the denomination."

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<sup>3</sup> Pages 1, 3, 5, 7, 10, 12, and 18 of the financial statement are included in the record.

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In response to the RFE, the Petitioner requested that the Director “consider its attestation as evidence of its intention to pay compensation to the Beneficiary upon the approval of the underlying Form I-360 petition.” The Petitioner submitted, among other things: copies of documents from its website, including the documents quoted by the Director in the RFE; copies of checks issued from the Petitioner to the Beneficiary as evidence of its intention to pay compensation to the Beneficiary upon the approval of the petition; and an updated letter from [REDACTED] attesting to the Petitioner’s intention to compensate the Beneficiary.

The Director denied the petition, concluding that the proffered position is primarily a self-supporting position and that the Beneficiary’s income appears to derive from sales commissions. We agree with the Director’s findings.

First, the Petitioner does not directly address its own documents that describe literature evangelists as “self-supporting” and indicate that “[t]heir only source of livelihood is from proceeds of the literature . . . which they sell to the public.” See *Philosophy of Need for the Literature Ministry* at 4, <http://publishing.gc.adventist.org/files/pdf/PhilosophyoftheLiteratureMinistry.pdf>; *Role of the Local Church in the Publishing Ministry* at 7, <http://publishing.gc.adventist.org/files/pdf/Role%20of%20the%20Local%20Church%20Publishing%20Ministries.pdf>. The Petitioner did not submit any evidence to show that the Seventh-day Adventist Church as a whole, or the petitioning conference specifically, has any history of paying a weekly salary to its literature evangelists. The Petitioner’s contentions that it will pay the Beneficiary a weekly salary after the petition is approved, that the proffered position does not engage in fundraising, and that the Beneficiary will not work as an independent contractor, are insufficient to establish its intent to compensate the Beneficiary without using monies obtained from the Beneficiary. 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)).

Second, the financial documents in the record also do not support the Petitioner’s contention that it will compensate the Beneficiary without monies obtained from him. Beginning with 2010, as the Director noted in the RFE, box 9 was checked on the Beneficiary’s 2010 Form 1099-MISC, indicating that the “Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale.” The Petitioner does not dispute that this evidence suggests that the Beneficiary’s income from 2010 was derived from his own resale of literature. There is no additional tax documentation from 2010 to show that the Petitioner compensated the Beneficiary without monies he obtained himself.

With respect to 2011, the Beneficiary’s Form 1099-MISC for that year, which indicated that the Petitioner paid him \$5,376 in nonemployee compensation, was significantly lower than the Beneficiary’s reported gross receipts of \$27,088. As the Director noted in the RFE, this discrepancy suggests that a substantial portion of the Beneficiary’s income was derived directly from sales. The Petitioner does not address this issue on appeal. A copy of the Beneficiary’s December 2011 monthly report in the record indicates that his year-to-date total number of hours worked was 2,157 hours.

Nonetheless, the Petitioner submitted copies of only two checks it issued to the Beneficiary in 2011 that total \$5,376.

Considering the record in its totality, the Petitioner has not established by a preponderance of the evidence its ability and intent to compensate the Beneficiary using funds that are not obtained from the Beneficiary, as required by 8 C.F.R. § 204.5(m)(7)(xi) and (xii).

#### IV. CONCLUSION

The Petitioner has provided sufficient documentation to establish that the proffered position is a religious occupation. However, the Petitioner has not established that it will compensate the Beneficiary without using funds obtained from the Beneficiary himself.

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, that burden has not been met.

**ORDER:** The initial decision of the Director, California Service Center, is affirmed, and the petition is denied.

Cite as *Matter of G-N-Y-C-O-S-*, ID# 73042 (AAO Sept. 15, 2016)