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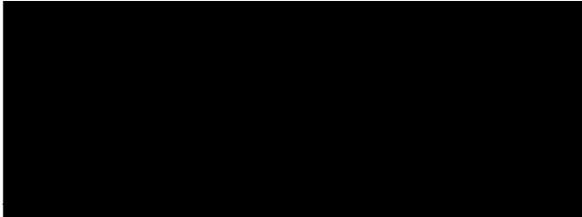


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **DEC 26 2007**
WAC 07 049 50665

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, 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 on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a Roman Catholic school. 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. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a teacher immediately preceding the filing date of the petition, or that the beneficiary's position qualifies as a religious occupation.

On appeal, counsel indicated that a brief would be forthcoming within 30 days. No brief arrived during the requested period. Counsel has subsequently stated that "supporting documents were prepared for submission within the 30 day appeal period but apparently due to error in this office were NOT submitted" (counsel's emphasis). Pursuant to 8 C.F.R. § 103.3(a)(2)(vii), the AAO is not required to accept untimely supplements to appeals, and the petitioner must demonstrate good cause for such submissions. Therefore, we will not accept counsel's latest submission. Acknowledging the above requirements, counsel requests "that the matter be considered on the merits of the argument presented on the appeal form itself." The arguments on the Form I-290B Notice of Appeal are substantive, and therefore the AAO will consider them, and would have considered them regardless of whether or not the petitioner subsequently supplemented the appeal in a timely fashion.

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 October 1, 2008, 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 October 1, 2008, 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 first issue under discussion concerns the beneficiary's past experience. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on December 1, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a teacher throughout the two years immediately prior to that date.

In a letter accompanying the initial petition, [REDACTED] Principal of the petitioning school, stated that the beneficiary "has been employed full time as a teacher by [the petitioner], beginning September 1, 2004, and continuing to the present time."

A contract in the petitioner's initial submission "is for 190 days, which will begin on August 7, 2006, and end on May 26, 2007." The contract obligated the school to pay the beneficiary's salary "in 12 installments . . . beginning on August 22, 2006 and ending on July 22, 2007." Tax documents in the record demonstrate the beneficiary's past receipt of her salary from the petitioning school in 2004 and 2005.

On March 19, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit additional "evidence of the beneficiary's work history beginning December 1, 2004, and ending December 1, 2006," including evidence of payment. In response, the petitioner submitted additional bank and tax records to establish past payments. The petitioner also submitted a copy of a "Teacher Service Record," showing the beneficiary's "Dates of Service." The document indicated that the beneficiary worked 190 days per school year, from August through May, beginning in 2004.

The director denied the petition on May 24, 2007, stating: "The record indicates that the beneficiary was not employed from May 6, 2005 to August 9, 2005 or May 26 to August 10, 2006. The petitioner has not established that the beneficiary was performing work continuously for the two years immediately preceding the filing of the petition."

On appeal, counsel observes that "[t]eachers receive a ten week period of leave between academic years." Counsel adds that such teachers "are in fact paid over a twelve month calendar year," an assertion supported by the contract submitted with the petitioner's initial filing.

The regulatory definition of "religious occupation" at 8 C.F.R. § 204.5(m)(2) includes "religious instructors" in that category. When determining whether a given alien works or has worked full-time, it is appropriate to consider what constitutes full-time employment in the alien's field; one must take into account the usual norms relating to the occupation.¹ Summer vacation is a standard feature of United States school systems. To

¹ This is, of course, not to say that a religious activity that occupies a negligible amount of time on a weekly or yearly basis, such a duty performed only during weekly services or during the celebration of an annual holiday, could reasonably be construed as "full-time" or "continuous" employment. In the context of religious education, it is clear that this beneficiary's duties are not merely occasional or incidental.

ignore this reality would disqualify a whole class of workers who are clearly covered by the plain language of the regulations.

Because the interposition of a summer break is the only basis cited for the director's finding that the beneficiary's work was not continuous, we withdraw the director's finding in this regard.

The remaining issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as:

an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Mr. [REDACTED], in his initial letter, described the beneficiary's work:

[The beneficiary] has taught religion and language arts to sixth grade students in a classroom setting.

As a teacher at [the petitioning] School, [the beneficiary,] as a part of her teaching obligation, teaches religion subjects during two class periods of each class day. In addition, there are several other religious activities which she handles as a volunteer catechist for the Diocese and as a Eucharistic Minister of the [petitioner's] Parish. . . . She is responsible in all her teaching activities for adherence to the teachings of the Roman Catholic Church.

While the beneficiary's activities as a catechist and Eucharistic minister speak to her expertise in matters of Catholic religious instruction, they do not appear to be part of her employment with the school. Rather, they appear to be volunteer duties through the church itself (rather than through the school), which the beneficiary would have performed regardless of her paid position with the school.

The contract included in the petitioner's initial submission includes this clause:

TEACHER agrees to participate in the building of the Christian Faith Community in the SCHOOL, to show respect for Catholic beliefs, to work for the achievement of the goals of Catholic education, and to aid in the Christian formation of the students by exemplifying in his/her own actions the characteristics of Christian living and, if assigned to teach Religion, to participate in the Diocesan Catechist Certification Program.

The director, in the RFE, instructed the petitioner to submit "a detailed description of the work to be done, including a list of the courses to be taught, number of hours each week teaching each course, specific job duties, and the level of responsibility" (emphasis in original). In response, the petitioner submitted a copy of

the beneficiary's "Teacher Schedule," showing the classes and activities in a typical workday from 7:30 a.m. to 3:30 p.m. The only periods specifically marked "Religion" were from 8:00 to 9:00 (four days a week for class 6-1) and from 2:15 to 3:00 (five days a week for class 6-2). Another document in the record indicates that, for grades 6-8, the class schedule should include "200 minutes per week" of religion classes.

The director denied the petition, stating that "a majority of the duties of the occupation do not have religious significance." On appeal, counsel asserts that the statute and regulations permit some degree of combination of secular and religious duties, and that "Catholic teachings permeate all of the subject areas taught."

We agree with counsel that a given occupation need not be entirely religious in nature. Even the clergy must deal with secular matters, regarding (for instance) financial matters. We further agree that there is a pervasive religious purpose underlying Catholic and other parochial schools; such schools exist primarily as a religious alternative to public schools (which, constitutionally, must embody a secular perspective that neither advances nor denigrates any one faith in particular, or religion in general). Given the nature of Catholic schools as an alternative to secular public schools, it would be unreasonable to expect the schools to neglect secular subjects that all students, whatever their faith, will require in their adult lives.

The above being said, a teacher of entirely secular subjects might not qualify, particularly if the school is willing to hire non-Catholics to teach those subjects. Here, however, the petitioner has repeatedly and consistently indicated that the beneficiary is a teacher of religion along with other subjects. The record establishes that the beneficiary's religious duties are not minimal, ancillary or incidental, appended to a fundamentally secular occupation in order to create the cosmetic appearance of a religious function. Rather, those religious duties are integral both to her occupation and to the religious character of the petitioning school. We find, therefore, that the beneficiary qualifies as a "religious instructor" as 8 C.F.R. § 204.5(m)(2) comprehends the term. For this reason, we withdraw the director's finding that the beneficiary's occupation does not relate to a traditional religious function.

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 met that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.