



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: EAC-98-250-51057 Office: Vermont Service Center

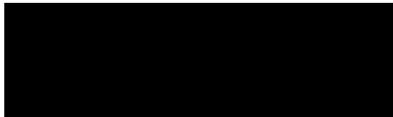
Date: JAN 29 2001

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a religious organization. It seeks classification of 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 serve as a teacher, scholar, and maker of "TZITZITH." The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The director also found that the petitioner had failed to establish that the prospective occupation is a religious occupation.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

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, 2003, 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, 2003, 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 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 to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m) (1) states, in pertinent part, that:

All three types of 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.

The petition was filed on September 2, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from September 2, 1996 to September 2, 1998.

In a letter dated March 15, 1998, a representative of an "Institution and Seminary of Jewish and Talmudic studies and a Synagogue in Jerusalem, Israel" stated that the beneficiary "has been with our Institution since 1987. He studies the Talmud, Torah, Mishna, Code of Jewish Law and other Jewish subjects for at least forty hours per week." In a separate letter, [REDACTED] stated that the beneficiary "has been employed by our company since 1995. [He] is responsible for making tzitzith for our company . . . He works at least 20 hours a week for our company."

On March 3, 1999, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, counsel stated that the beneficiary has been a "religious worker for more than ten years and his entire life has been dedicated to the Jewish religion."

On appeal, the representative of the "Institution and Seminary" in Israel stated that the beneficiary "does in fact attend the Yeshiva for between 20 and 30 hours a week. At a minimum he attends classes, leads learning sessions and gives lectures . . . He receives a stipend for his work here." [REDACTED] states that the beneficiary "is employed by us in the manufacture of these tzitith. He began work for our company in 1995." In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of full-time salaried employment. See 8 C.F.R. 204.5(m) (4). Therefore, the prior work experience must have been full-time salaried employment in order to qualify as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes

continuous work experience in such an occupation. The petitioner has submitted letters from unidentified organizations in Israel that claim the beneficiary worked and studied throughout the two-year qualifying period. Neither of these organizations provided any contemporary, documentary evidence (such as time sheets or pay stubs) to support their assertions. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from September 22, 1996 to September 2, 1998. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means 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.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the

denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated June 25, 1998, the petitioner stated that the beneficiary will:

work as a teacher, scholar, and maker of "TZITZITH" (ritual fringes) for both Tallit Katan and Tallit . . .

In addition to working on the Tzitzith, he will also be working in the Synagogue maintaining our religious objects which is part of our religion. [He] will be doing this on a daily basis . . . He will help to maintain mezuzot, scrolls and phylacteries in order to maintain their integrity as religious, pure kashrut.

[The beneficiary] will also be helping and working with some of our students in the study of the torah, and his background in the Torah is necessary in this work . . .

He will be required to be in attendance at our Friday night and Saturday morning services to help in the preparation of the Synagogue services and the work that is done on both Friday nights and Saturday, our holiest days.

On March 3, 1999, the director requested that the petitioner submit additional information. In response, the petitioner stated that "all of [the beneficiary's] duties . . . are duties which will be based upon his learning and work that he has done in the seminary in Israel. He would not have been able to make the tzitzith in Israel for use if he did not have the religious training and background."

On appeal, the petitioner states that the beneficiary "will be spending more than forty (40) hours per week studying and doing necessary work for our synagogue." The petitioner has asserted that the beneficiary was required to complete special training prior to qualifying to make the tzitzith; however, the petitioner has not documented what this training entailed or that the beneficiary actually completed this training. Further, the beneficiary's job description, as provided by the petitioner, does not suggest that any specific religious education was required of the beneficiary. Rather, it appears that any devout member of the petitioner's congregation would be capable of doing the beneficiary's prospective occupation. Moreover, the petitioner has not indicated that the beneficiary's prospective occupation is

traditionally a full-time, salaried occupation within the denomination. As such, the petitioner has failed to establish that the prospective occupation is a religious occupation.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4) or that it has the ability to pay a wage as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

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 not sustained that burden.

ORDER: The appeal is dismissed.