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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-01-052-53965 Office: Vermont Service Center Date: APR 10 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: 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: [redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Myra L. Rosenberg
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is described as a school. 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), in order to employ her as a "Curative Educator" at an unspecified annual salary.

The director denied the petition on the grounds that the petitioner failed to establish that it was a qualifying tax exempt organization, that the beneficiary's proposed duties were in a qualifying religious vocation or occupation, or that the beneficiary had two years of continuous experience in a religious occupation.

On appeal, counsel for the petitioner submitted a written brief.

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 petitioner in this matter is described as a non-profit charitable organization consisting of a residential community which currently houses 61 mentally handicapped residents with 28 "Camphill Community co-workers" and 35 volunteers and foreign students. The beneficiary is described as a native and citizen of Scotland who was last admitted to the United States in August 1998, as an R-1 Special Immigrant Religious Worker.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

Regulations at 8 C.F.R. § 204.5(m)(3) state, in pertinent part, that each petition for a religious worker must be accompanied by:

> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
>
> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or
>
> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

In addressing this requirement, the petitioner indicated it was a bonafide religious organization exempt from taxation under section 501 (c)(3) and that it was affiliated with Camphill Association of North America.

The pertinent Bureau regulations provide for three methods to demonstrate that a petitioner is a qualifying religious organization. The petitioner must either provide verification of individual exemption from the U.S. Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The petitioner submitted a letter from the Internal Revenue Service (IRS) dated September 2, 1982, showing that it was granted tax-exempt status under section 501(c)(3) on the basis that the petitioner qualified under section 170(b)(1)(A)(vi) of the Internal

Revenue Code. This section does not pertain to religious organizations. The petitioner also submitted a 1999 Form 990 "Return of Organization Exempt From Income Tax." Under Part III, the petitioner stated: "We are a therapeutic life-sharing school community serving 75 children with developmental disabilities. Educational and therapy programs combined with extended family living, create an environment which enriches wholeness in the special needs children." Under Part IV "Reason for Non-Private Foundation Status," the organization is not a private foundation because it is: (please check only **one** applicable box.)", the petitioner checked #6 A school. Section 170(b)(1)(A)(ii).

In response to a Bureau request dated September 20, 2001, for additional evidence, the petitioner submitted a copy of the "by-laws" of [redacted] Inc. The by-laws are dated December 1, 2001, even though evidence of record indicates that the "community" has purportedly operated as [redacted] since 1954. The separate incorporation documents submitted for [redacted] Inc. make no reference to its incorporation having been based on any religion or religious practices. While, the by-laws dated after the filing of the petition, reflect an organization that is purportedly totally faith based.

Counsel argues on appeal that the petitioner is primarily a non-denominational Christian church and that under the tax laws it qualifies as a non-profit religious organization. Counsel's argument is not persuasive. Both the statute and the regulations rely on the IRS determination of tax exempt status in defining a qualifying religious organization. 8 C.F.R. § 204.5(m)(3)(i)(B) relies on section 501(c)(3) "as it relates to religious organizations." There are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the Internal Revenue Code. Only organizations classified, or classifiable, as "churches" pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC are qualifying religious organizations for the purpose of special immigrant religious worker classification. Charitable or community organizations classified under section 170(b)(1)(A)(vi) are not qualifying, even if they are organized and operate under the principles of a particular religious faith. Accordingly, the petitioner is not tax-exempt as a religious organization and is ineligible to receive special immigrant classification for any prospective alien employees. For this reason, the petition may not be approved.

The next issue to be addressed in this proceeding is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

Regulations at 8 C.F.R. § 204.5(m)(2) state, 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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. 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 and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Bureau 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.

The duties of the proposed position are described, in pertinent part, as follows:

> First and foremost, [the beneficiary], is a [redacted] Co-worker. This means that she will imbue everything that she does with the religious values with which she has identified. By her very being she will be

> able to impart these values to others, both by teaching and by demonstration. She also is committed to the totality of the work, which encompasses [redacted] mission towards christianizing life for children with developmental disabilities. This total commitment allows her to adjust her day-to-day activities to meet the actual needs present at a given time. As a [redacted] community Co-worker [sic], [the beneficiary] is on duty 24 hours a day. She is granted one day off a week but will forego this if needs require her attention and participation. This is more than a full-time job. It requires her religious activity in all situations she finds herself at all times [sic].
>
> Second, [the beneficiary] is a Curative Educator. This refers to the Anthroposophical/Christian attitudes and practices she has learned and will perform in regard to the care, nurturing, training, and education of children with mental retardation. As a religious worker, [the beneficiary] must try to help handicapped children integrate and harmonize their body, soul, and spirit. As a curative teacher, [the beneficiary] must help children find a healthy relationship to the healing world of the spirit through developing a healthy sleeping/walking rhythm, a healthy balance of active and passive activities, a healthy sense of nutrition, and a healthy mental life of inspiring ideas and images. Her work as a curative teacher takes place whenever she is with special needs children, whatever the setting or activity. This is a religious activity, as it requires the meeting with the child's Higher Being [sic] and his Guardian Angel [sic], and a life of meditation and prayer to receive the right guidance from the spiritual world.

The petitioner submits an hourly breakdown of typical duties to be performed by the beneficiary, including: 12 hours per week as a eurythmy teacher, primarily teaching physical movement to groups of children; 18 hours a week as a curative eurythmist, performing physical therapy; 20 hours per week as an assistant houseparent, assisting in managing the residence of 6-7 mentally retarded children; and, 10 hours per week as a religious lesson instructor.

On appeal, counsel states that the position of eurythmist/assistant houseparent is a traditional religious occupation and cites several non-published decisions as supporting this conviction. The unpublished administrative decisions relied on by counsel do not have binding precedential value. Only decisions published and designated as precedents by the Administrative Appeals Office are binding on Bureau officers. See 8 C.F.R. § 103.3(c). Counsel disagrees with the Bureau's interpretation of its own regulations,

but has not shown that the director's decision was based on an incorrect application of law or Bureau policy.

After a review of the record, it is concluded that the petitioner has not established that the position of curative educator constitutes as a qualifying religious occupation.

First, the petitioner submitted no documentation that the position is a traditional full-time paid occupation in its denomination. 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).

Second, the duties of the position do not appear to constitute the duties of a religious occupation as contemplated by the regulations. The duties described reflect a position with a somewhat routine schedule of secular duties as opposed to an all encompassing full-time spiritual commitment, as claimed. Rather than a religious vocation, the petitioner describes the position of the beneficiary as more of a lay religious occupation. The duties of the position are not necessarily dependent on any religious background or prescribed theological education. Nor is the performance of the duty directly related to the creed and practice of any denomination. Accordingly, it must be concluded that the petitioner has failed to establish that the position of curative educator or assistant houseparent constitutes a qualifying religious occupation within the meaning of section 101(a)(27)(C) of the Act. For this reason, the petition may not be approved.

The petitioner must establish that the beneficiary has had the requisite two years of continuous experience in a religious occupation.

Regulations at 8 C.F.R. § 204.5(m)(1) state, 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 December 7, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least December 8, 1998.

In a letter dated November 20, 2000 entitled Job Offer & Job Description, the petitioner stated, in pertinent part, that:

> As for all [redacted] religious workers [the beneficiary] does not receive a specific wage or personal salary in the usual sense. [The beneficiary] is given room, board, medical insurance and spending money for personal expenses out of the resources of the community at [redacted] Any special or extraordinary personal needs that [the beneficiary] encounters will be met by an emergency social fund maintained by [redacted] [The beneficiary] will have all her needs met through this method of sharing community resources, and will not be dependent on any supplemental employment or solicitation of funds for support. Please be assured that no part of [the beneficiary's] duties or activities will involve the selling of articles and/or solicitation and acceptance of donations. [The beneficiary's] work is strictly to further [redacted] goals to serve children with handicaps in an ideal-permeated community setting. The approximate value of the benefits [the beneficiary] receives is estimated at $14,500.

The petitioner stated elsewhere, in pertinent part, that:

> [The beneficiary], has been a full-time [redacted] and member of the community at [redacted] in R-1 status since 1998 (July 30, 1998). She is employed solely within the community and does not engage in remunerative employment. [The beneficiary] has been involved in the [redacted] Movement since 1972 and is a devoted and spiritually strong Christian.

The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The record does not reflect that the beneficiary has taken any religious vows.

The regulations recognize this distinction by requiring that 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 salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4).

The record reflects that the beneficiary does not receive a salary.

The petitioner has not provided a comprehensive description of the beneficiary's employment history for the period from July 1998 to July 2000. Simply going on record without supporting documentary evidence to establish that the beneficiary has had two years of continuous experience in a religious occupation 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).

Accordingly, the Bureau is unable to determine that the beneficiary was engaged in any particular occupation, religious or otherwise, during the two-year qualifying period. For this additional reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.