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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

AUG 19 2003

File: WAC 01 218 54876 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an Orthodox Jewish boys' high 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 teacher of religious studies at a salary of $400.00 weekly.

The acting director denied the petition, finding that the petitioner had failed to submit documentation necessary to establish that the beneficiary is qualified to engage in a religious occupation.

On appeal, counsel for the petitioner states that the petitioner submitted evidence of the beneficiary's work experience, including a letter from the beneficiary's prior employer and a clarification of the duties and hours of the position offered. Counsel resubmits documentation previously submitted in response to the Bureau's request for additional evidence, and asserts that it should satisfy the Bureau's concerns regarding the beneficiary's work experience.

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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation 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."

The beneficiary is a native and citizen of Israel who was last admitted to the United States as a visitor for pleasure (B-2) on March 22, 1992, with permission to remain until March 21, 1993. According to the record, it appears that the beneficiary has remained unlawfully in the United States since the expiration of her authorized period of admission. The Form I-360 visa petition indicates that the beneficiary has never worked in the United States without permission.

The documentation submitted reflects that the beneficiary was a teacher at the West Valley Hebrew Academy from September 1998 to June 2001. In exchange for her services, the beneficiary was given tuition credit (valued at $10,000) for her son to attend the academy as a full-time student.

At issue in this proceeding is whether the petitioner has established that the beneficiary is qualified to engage in a religious occupation.

The petition was filed on April 30, 2001. In support of the petition, counsel for the petitioner submitted a letter dated April 23, 2001, stating that:

> [The beneficiary] is an experienced Jewish Education teacher of religious subjects. She has taught in this capacity in Israel. Additionally, she received her teaching credential in Israel and she has spent the past two years working for the West Valley Hebrew Academy, working as a teacher of religious studies. [The beneficiary] has taught a wide variety of religious subjects, including Bible, Prophets, religious holidays and customs, song and dance, and Hebrew Language.

On December 4, 2001, the Bureau requested the petitioner, through counsel, to submit evidence that the beneficiary meets the requirements of the position being offered, i.e. that she has a

bachelor's degree or foreign equivalent. In response to that request, counsel submitted a letter dated January 4, 2002, stating that:

> The position required [sic] a qualified and experienced teacher and based on her religious background and teaching experience, [the beneficiary] is qualified as a teacher of Religion. She does not need specific educational credentials but rather qualifies based on her religious and work background.

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

* * *

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> * * *
>
> > (C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all cases, an official academic record showing that the alien has the required degree must be submitted.

In the instant case, the petitioner has submitted a letter co-signed by counsel and the petitioner attesting to the beneficiary's qualifications. No academic record has been submitted. The petitioner has, therefore, failed to establish that the beneficiary is qualified to engage in the profession of teacher of religious studies. For this reason, the petition may not be approved.

Beyond the decision of the acting director, the petitioner also has not established that it has had the ability to pay the beneficiary the proffered wage since the filing date of the petition. Since the petition will be denied for the reason stated above, this issue need not be discussed further.

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.