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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

PUBLIC COPY

[redacted]

File: [redacted] Office: VERMONT 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]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church affiliated with the Seventh Day Adventist (SDA) denomination. The petitioner 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 him as a bible instructor.

The director denied the petition, finding that the petitioner failed to establish that it is a qualifying religious organization, that the offered position qualifies as a religious occupation for the purpose of special immigrant classification, and that the beneficiary has had the requisite two years of continuous experience in a qualifying religious occupation.

On appeal, counsel for the petitioner submits a statement in support of the appeal, asserting that the petitioner is a qualifying religious organization, the beneficiary has been employed for the requisite two years, and that the offered position is a full-time religious occupation.

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 beneficiary is a 31-year old native and citizen of El Salvador. The beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on September 4, 1999. The record reflects that the beneficiary received an extension of stay to September 2, 2000.

The first issue to be addressed in this proceeding is whether the petitioner is a qualifying religious organization.

8 C.F.R. § 204.5(m)(3) states, 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).

The petitioner provided the Bureau with a letter from the Internal Revenue Service (IRS) indicating that the General Conference of Seventh Day Adventists located in Washington D.C. was granted group tax-exempt status under section 501(c)(3) of the Internal Revenue Code. The director determined that the petitioner failed to establish that the petitioner qualifies as a tax-exempt religious organization because the IRS document submitted was not addressed to the address on the petition. In response to a request for additional evidence, the petitioner responded with a statement indicating that the petitioner is a subordinate of the Seventh Day Adventist (SDA) Church to which the IRS document was addressed. To support that statement, the petitioner submitted a listing of the various conferences inherent in the SDA Church and IRS documents addressed to the main SDA church. The director concluded that the petitioner failed to establish that the petitioner is entitled to share the group tax exemption of the SDA.

On appeal, counsel for the petitioner asserts that the petitioner is a qualifying religious organization and submits a print-out from the SDA website indicating that the petitioner is a Spanish church in the Greater New York Conference of SDA and that the Greater New York Conference of SDA has been granted tax-exempt status by the state of New York. The petitioner submitted an SDA church manual describing the four constituent levels in the SDA organization and

an SDA directory outlining the North American Division, the Atlantic Union Conference, and the Greater New York Conference. The petitioner is listed as a member of the Greater New York Conference of SDA on the latter's website. In review, the petitioner has established that it is a qualifying organization.

The second issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

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.

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 the regulations.

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.

In this case, the petitioner asserts that:

> His duties include preparing and conducting sermons in the church, conducting Bible Classes, organizing prayer groups, coordinating vacation summer school bible classes, consolidating new believers, conducting workshops, preparing and presenting seminars (profound studies of certain topics of the Bible), working in all the religious services in the church, doing home and hospital visitations to provide spiritual counseling and religious orientation to the church members and people from the community.

The director determined that the record is insufficient to establish that the position of bible instructor qualifies as a religious occupation. The director further determined that the petitioner failed to establish the religious requirements to qualify to perform the duties of the position; therefore, he was unable to determine whether the position qualifies as a religious

occupation.

After a review of the record, it is concluded that the petitioner has not established that the position of "bible instructor" constitutes a qualifying religious occupation. The petitioner submitted no documentation that the position is a traditional full-time paid occupation in its denomination. The petitioner failed to establish the qualifications required for the position. This set of facts is insufficient to establish that the proposed position is a traditional religious occupation of the petitioning church or its denomination.

On appeal, counsel for the petitioner asserts that the SDA has filed many applications for bible instructors that the Bureau has approved. Counsel states that the job duties of the proffered position are identical to that for a pastoral assistant as defined in the Dictionary of Occupational Titles (DOT).

Counsel's arguments are not persuasive. The Bureau is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals, which may have been erroneous. *See Matter of Church of Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). The assertion that the proffered position is identical to that of a pastoral assistant as defined in the DOT is inconsequential. The petitioner failed to establish that the proffered position is traditionally a fulltime religious occupation within the denomination.

The final issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

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 April 6, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 6, 1999.

The petitioner submitted a letter from its Pastor, stating that the beneficiary had worked for an SDA church in El Salvador from 1988 to July 1999 as a bible instructor, and that the beneficiary had been working for the petitioner since July 1999 as a bible instructor. The petitioner indicated that it paid the beneficiary in cash since he did not have a social security number. The petitioner submitted copies of two years of receipts for salary paid to the beneficiary.

The director determined that the petitioner had failed to establish that the beneficiary has the required two years of experience in the religious occupation because the petitioner failed to establish that the proffered position qualifies as a religious occupation.

In review, the AAO concurs with the director and notes that evidence in the form of cash receipts is insufficient to establish that the petitioner had been paying the beneficiary a salary continuously for the two years preceding the filing of the petition.

In review, the petitioner has failed to overcome the director's objection to approving the petition.

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.