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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: WAC 01 217 56328 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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:

[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 employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a religious organization with churches in several locations in California. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a computer science and video evangelistic ministry supervisor. The director determined that the petitioner has failed to establish that the beneficiary's position is a qualifying religious occupation.

On appeal, the petitioner asserts that the beneficiary's work is integral to the petitioner's mission.

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)(2) defines a "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.

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 (cited above). 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 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.

Dr[redacted] the petitioner's senior pastor, lists the beneficiary's responsibilities:

- Editing and recording Christian videotapes with the purpose of reaching new souls for the work of God.
- Prepare Christian movies to reach out [to] the drug addicted and the hurting people in our community.
- Designing Christian web pages.
- Installing and trouble shoot the computers.
- Setting-up networking systems.
- Developing Computer programs.
- Performing upgrades and any other duty that has to do with the PCs.
- Training Camera Operators.
- Consulting.
- Broadcasting.
- Technical Support.
- Internet Outreach.

Dr[redacted] states that the beneficiary "will be assigned to [the petitioning organization] . . . as soon as his legal status permits." Dr[redacted] also indicates, however, that the beneficiary has performed the above duties for the petitioner "continuously and without interruption" since roughly December 1998. It appears from these statements that the beneficiary has performed the above services without pay, or at least with no formal employment relationship with the petitioner.

The director instructed the petitioner to submit further evidence to establish, among other things, the beneficiary's qualifications for the position sought. The petitioner has submitted documentation showing that the beneficiary took three computer-related courses. The record reflects no other educational credentials.

The director denied the petition, having concluded that the beneficiary's activities are inherently secular rather than traditional religious functions of the denomination. The director observed that secular duties (such as computer programming and video production) do not become religious in character merely because the beneficiary performed those duties on behalf of a religious organization.

On appeal, Dr[redacted] asserts that the beneficiary's "ministry is a traditional religious function. In our Church the Ministry of **Computer Science and Video Evangelistic Ministry** is a traditional [way] to take the Good News of Christ through the new way of communication, this is related to the religious broadcaster." The regulation at 8 C.F.R. § 204.5(m)(2) includes "religious broadcasters" among qualifying religious occupations, but this term applies to individuals who personally communicate religious material through broadcast media. Technical personnel responsible for the preparation and transmission of this material are not, themselves, religious broadcasters.

Dr[redacted] calls the petitioner a "preacher," but he does not elaborate. The list of the beneficiary's duties, submitted with the initial petition and again in response to the request for further evidence, does not indicate that the beneficiary himself actually "preaches." Instead, the list of duties describes a technician working with computers and studio equipment. The record does not establish that the beneficiary has any formal religious training beyond the usual knowledge obtained through membership in the congregation.

The petitioner submits documents describing its "Camera and Television Ministry," describing the ministry as "an important part of the [petitioning] church." The documents state that the Camera and Television Ministry is "organized and directed by Dr[redacted]"

The petitioner's submission on appeal does not overcome the director's finding. Even if the broadcast of religious material is a traditional religious function of the denomination, it does not follow that maintenance and operation of broadcasting equipment, or technical functions such as editing and production, are traditional religious functions as well. From the descriptions provided, the beneficiary appears to be engaged in secular activities common to all broadcasting production companies, rather than in any traditional function unique to religious organizations.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.