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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]

JUN 27 2003

File: WAC 01 023 53451 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 before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. 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 "Director of Christian Education."

The acting director denied the petition, finding that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification and that the beneficiary's claimed service with the petitioner was sufficient to satisfy the requirement that she had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition. The acting director further found that the petitioner failed to establish that the beneficiary was qualified for the position because she lacked a bachelor's degree.

On appeal, counsel for the petitioner submits a brief asserting that the beneficiary has been in the full-time employ of the petitioner from October 2, 1998 to the present. Counsel argues that the beneficiary's position requires "an intricate understanding of the belief system of [the petitioning] organization thereby qualifying as a religious occupation. On appeal, counsel provides evidence that the beneficiary has the equivalent of a bachelor's degree in Christian Education.

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 a church established in 1982. It has the appropriate tax-exempt status. It declares 300 plus members and six employees. The beneficiary is a native and citizen of Mexico who last entered the United States on July 25, 1995 as a visitor for pleasure (B-2). The record reflects that the beneficiary previously entered the United States as an academic student (F-1) on August 28, 1994. The record reflects that the beneficiary remained beyond any period of authorized stay and has resided since such time in an unlawful status. The petitioner disclosed on the petition form that the beneficiary has been employed in the United States without authorization.

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 the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

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 professional cases, an official academic record showing that the alien has the required degree must be submitted.
>
> (D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

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

> *Professional capacity* means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.
>
> *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.

The petitioner describes the beneficiary's job duties as follows:

> [The beneficiary] is employed by our organization as a Superintendent, whose primary duties are as Director of Christian Education. Although she does assist in the Kindergarten class, her primary duties are not that of a teacher. She plans, directs and manages our entire Christian Education Department.
>
> In directing Christian Education, her duties encompass a wide range of activities and programs. She must supervise and develop our Sunday school programs for elementary through high school age children. She must organize, plan and manage our Vacation Bible School Program, which is a sort of religious summer camp where in the children are taught religious values in a day camp like environment. She is also directly responsible for planning the religious education for our summer youth camps. Her duties also include planning conferences involving Christian Education.
>
> While many of these duties and programs may sound secular in nature, they are all of a deeply religious nature. It is important to our faith and belief that a member in good standing with our organization must fill this position. It would be impossible for a secular person to perform these duties sufficiently, due to the deeply rooted religious values that are taught through these programs.

After a review of the record, it is concluded that the petitioner has not established that the position of "Director of Christian Education" constitutes 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). The petitioner asserted that beneficiary's duties and programs are "all of a deeply religious nature," but did not provide verification from an authorized official of the denomination that permanent salaried employment in such an occupation is a traditional function within the denomination.

Second, while the petitioner asserted that the beneficiary's job duties are of a religious nature, the evidence shows otherwise. Organizing, managing, and planning programs for Sunday School, Vacation Bible School, summer day camp and conferences are more secular and administrative than religious in nature.

The next issue raised by the acting director is whether the petitioner established that the beneficiary had had the requisite two years of continuous 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 October 2, 2000. Therefore, the petitioner must establish that the beneficiary was continuously performing in the capacity of a Director of Christian Education since at least October 2, 1998.

In this case, the petitioner describes the beneficiary's work experience as follows:

> October 2, 1998 to July 16, 1999, [the beneficiary] worked two daily shifts five days week, Monday through Friday. The first shift began at 8:30 AM to 12 noon when she served as Teacher's Assistant for Kindergarten. The second

shift was form 4:00 to 8:00 PM when she served as superintendent of Christian Education. In addition to the above responsibilities she also directed the choir, drama presentations, camping activities, Sunday School coordinator, and many other jobs within the church.

July 17, to August 7, 1999, during her three-week summer vacation, she served as a camp director with staff working under her leadership.

August 8 to the 15, 1999, she served as Director of Daily Vacation Bible School at our church.

August 16 to the 28, 1999, she served as Coordinator for our yearly Children's Mission Conference.

August 30, 1999 to July 20, 2000, she resumed her teaching and superintending responsibilities working the same hours as above.

June 10 - 11, 2000, she led a youth missionary outreach to Shafter, California, in conjunction with Shafter Congregational Church.

July 21, 2000 to August 10, 2000, she took her vacation visiting relatives in various parts of the States.

August 11 to 27, 2000, she trained leaders and directed the Daily Vacation Bible School.

August 28 to September 4, 2000, she again served as Coordinator for the Children's Missions Conference and did prep work for her Kindergarten classes.

September 5 to October 2, 2000, [the beneficiary] taught her Kindergarten class which began at 8:30 AM and ended at 3:00 PM, from Monday through Thursday, and on Friday from 8:30 AM to 1:30 PM; she then did her Superintending work from 5:30 to 7:30 PM, Monday through Friday.

She was paid $500 monthly by check for teaching Kindergarten during the two school years, and

> $600 monthly by check for her job as Superintendent the first school year and $400 monthly by check the second school year.

Finally, the acting director found that the petitioner had failed to establish that the beneficiary was qualified because she lacked a bachelor's degree. The petitioner, on appeal, has established that she possesses the equivalent of a bachelor's degree.

In review, the beneficiary has been employed on an intermittent and part-time basis in the proffered position; therefore, the evidence is not sufficient to establish that the beneficiary was continuously engaged in the proffered position on a full-time basis for the two-year period preceding the filing of the petition.

Beyond the decision of the director, the petitioner failed to demonstrate its ability to pay the proffered wage. *See* 8 C.F.R. § 204.5(g)(2). Since the appeal will be dismissed on the grounds discussed above, this issue will not be explored 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.