



CA

U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

AUG 1 2001

File: [Redacted]

Office: Texas Service Center

Date:

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER: Self-represented

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 which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations 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 him as a "music minister" at an annual salary of \$16,000.

The director denied the petition finding, in pertinent part, that the petitioner failed to establish that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding filing of the petition and that the church failed to establish its ability to pay the proffered wage.

On appeal, the petitioner submitted additional documentation.

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 church affiliated with the Florida Baptist Convention. The size of its congregation

was not indicated. The beneficiary is a native and citizen of Chile who was last admitted to the United States on July 31, 1998, in F-1 classification as a student pursuing a degree in music at the University of South Florida.

The first issue is whether the petitioner has established that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

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 November 15, 1999. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least November 15, 1997.

In the decision, the director found that the beneficiary had been a full-time academic study, with part-time secular employment by the university, since July 1998 and had not been engaged in a religious occupation. The director noted that any voluntary participation in church activities does not constitute carrying on a religious occupation for the purpose of special immigrant classification. The director also found that there was no evidence that the beneficiary had been continuously carrying on a religious occupation prior to his entry into the United States.

On appeal, the petitioner submitted additional letters stating that the beneficiary had been involved in church activities both in the United States and in Chile.

On review, it must be concluded that the petitioner failed to overcome the director's findings. Voluntary participation in church activities is not considered to be engagement in a religious occupation. The plain meaning of the term "occupation" is an individual's primary endeavor. It is customary for members of a religious organization to perform voluntary services for the organization as an expression of their faith. They also carry on secular occupations as a means of livelihood. Merely stating that an individual "performed work" for a church is not sufficient to establish that the individual was engaged in a religious occupation. The record in this matter reflects that the beneficiary's "occupation" in the United States since July 1998 has been that of an academic student, not a lay religious worker engaged in a religious occupation.

In addition, the petitioner failed to provide a detailed description of the beneficiary's employment in Chile or to submit



proof of that employment, such as tax records. Absent a detailed description of the beneficiary's employment history, supported by credible evidence, the Service is unable to determine that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

The next issue 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.

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:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

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(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:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

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 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.

On appeal, the petitioner asserted that "cantor" is listed as a qualifying occupation and that the duties of a "music minister" are similar to those of a cantor.

On review, it must be concluded that the petitioner has failed to overcome the director's objection. The title of a position is not dispositive in determining whether a proposed job qualifies as a religious occupation in these proceedings. In this case, the petitioner failed to show that the position music minister requires prescribed religious training or that it is traditionally a full-time salaried occupation within the denomination. Absent such documentation, it cannot be considered that the position of music minister qualifies as a religious occupation within the meaning of section 203(b)(4) of the Act.

The final issue is the petitioner's ability to pay the proffered wage.

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

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United

States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner stated that the proffered wage in this matter is \$16,000 per year. The petitioner submitted copies of its monthly bank statements to demonstrate its financial ability to pay the proposed salary. These documents do not satisfy the documentary requirement. The petitioner must submit evidence of its ability to pay the wage in the form of annual reports, federal tax returns, or audited financial statements. The petitioner has not satisfied this burden.

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

ORDER: The appeal is dismissed.