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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

JUL 3 2001

File: [Redacted] Office: VERMONT 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)

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

IN BEHALF OF APPLICANT

Self-represented

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

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

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter 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 choir master.

The director denied the petition determining, in pertinent part, that the petitioner failed to establish that the beneficiary had at least two years of experience continuously engaged in a religious occupation. The director further found that the petitioner had not established its ability to pay the proposed wage.

On appeal, the petitioner submitted additional documents, including a letter stating that the beneficiary had been employed by a church in Armenia and a budget statement of the petitioning church.

Section 203(b)(4) of the Act provides classification as a special immigrant religious worker to a qualified alien 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 is a church. The petitioner did not provide an estimate of the size of its congregation or state the number of employees, but claimed a projected 1999 budget of approximately \$184,000. The beneficiary is a native and citizen of Armenia who was last admitted to the United States on March 24, 1999, as an R-1 religious worker.

The first issue raised by the director is whether the beneficiary satisfied the requirement of having had two years of 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 May 3, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious occupation for at least the two years since May 3, 1997.

The petitioner failed to provide any description of the beneficiary's prior occupation abroad and the director denied the petition, in part, on that basis. On appeal, the petitioner submitted an English-language letter signed by [REDACTED] Primate. The letter stated that the beneficiary was employed by the "Diocese of Moscow" as Choir Director of the Armenian Apostolic Church from October 1994 to November 1998.

On review, the letter from Rev. Gureghian is not sufficient to satisfy the petitioner's burden of proof. The letter does not provide sufficient detail for the Service to conclude that the beneficiary was employed in a full-time capacity and as an occupation. As noted by the director, part-time employment is not sufficient to be considered engaging in an occupation within the meaning of this provision.

Furthermore, press clippings submitted to the record reflect that the petitioner is a professional musician, a percussionist. Therefore, his occupation would appear to be secular, not religious, despite any services he may have rendered to his church.

In addition, the beneficiary entered the United States with authorization to be employed as a religious worker. While the

petitioner is in Washington, DC, the beneficiary reported an address in Rhode Island. While the record does not show that the beneficiary's R-1 classification was based on employment with the instant petitioning church, there is no evidence that he has been continuously employed by a religious institution since his admission to the United States. Therefore, the petitioner has failed to overcome the director's objection and establish that he was continuously engaged in a religious occupation from at least May 1997 to May 1999.

It must also be determined whether the past or proposed duties of the beneficiary constitute a religious occupation for the purposes of this proceeding.

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.

The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The examples listed reflect 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 religious counselor, catechist, and cantor, 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.

In this case, it must be concluded that the position of "choir master" is not a religious occupation. First, it is not reasonable to assume that a small church employs a choir master on a full-time basis. There is no evidence that the petitioner has ever employed someone in this capacity and it offered no explanation of its decision to do so, other than seeking an immigration benefit for the beneficiary.

Second, the duties of a church choir director have not been shown to be qualifying. A musical background, rather than a theological one, is the only prerequisite for the position. There is no inherent requirement that a person employed as a choir director be a member of the employer's denomination or that he or she participate in the worship services, beyond providing the musical services. The petitioner has not establish that the position is regulated by the governing body of the denomination or that it requires specific prescribed religious training. For this reason as well, the petition may not be approved.

The final issue is the petitioner's ability to pay the proffered salary of \$24,000.

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.

To address this requirement, the petitioner submitted a projected budget and copies of bank account statements. These documents do not satisfy the documentary requirement. The petitioner must submit evidence of its ability to pay the proposed salary in the form of annual reports, federal tax returns, or audited financial statements. The petitioner failed to meet 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.