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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: WAC-00-250-55905 Office: California Service Center Date: MAY 01 2002

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)

IN BEHALF OF PETITIONER: [redacted]

Public Copy

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. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as a church. It seeks classification of the beneficiary as a special immigrant minister 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 a pianist at a salary of $1,500 per month.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had had the required two years of continuous experience in a religious occupation. The director noted that the beneficiary was not engaged in a religious occupation during the period she resided in the United States as a full-time student in F-1 classification.

On appeal, counsel for the petitioner argued, in pertinent part, that the beneficiary entered the United States in B-2 classification and did not commence her studies until sometime thereafter.

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. The pastor did not identify any denominational affiliation and did not provide a description of the size of its congregation or the number of employees. The record reveals that the beneficiary is a native and citizen of Korea who was last admitted to the United States on February 19, 1999, as a B-2 visitor. She was granted a change of status to F-1 on June 22, 2000, in order to attend a two year program in English as a second language (ESL). The petitioner declared on the petition form that the beneficiary has never been employed in the United States without authorization.

The record has been reviewed *de novo*. 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 it is a qualifying religious organization as defined in this type of visa petition proceeding.

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).

In addressing this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) reflecting the group tax exemption granted to the Southern Baptist Convention of Arizona, Inc. However, the petitioner failed to provide evidence that it was a member church of that organization or that it was covered under the group tax exemption of that organization.

The pertinent Service regulations provide for three methods to demonstrate that a petitioner is a qualifying religious organization. The petitioner must either provide verification of individual exemption from the U.S. Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS.

Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution. The petitioner has failed to satisfy this requirement.

The next issue 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)(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 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.

The duties of the position were described as directing the playing of the piano at worship services and working with the church choir. The petitioner asserted that this would be a full-time permanent position.

Upon a review of the record, it is concluded that the petitioner has not established that the position of pianist at its church constitutes a qualifying religious occupation.

First, the petitioner submitted no documentation that the position is a traditional full time paid occupation at its facility or in its denomination at large. 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).

Second, the petitioner gave no indication that it has ever employed a member in this capacity in the past and gave no explanation of its decision to do so at this time. In addition, the petitioner provided no explanation of its recruitment process. There is no indication whether the position was advertised or whether other candidates were considered. The petitioner also provided no indication of the size of its congregation or the number of worship services. Absent such basic information, the Service is unable to conclude that the proposed position could reasonably be a permanent full-time job. Where claims underlying an employment-based visa petition consist of unusual circumstances, the Service may reasonably inquire into the claim that the petitioner has both the ability and the intention to employ the beneficiary in the manner stated. See Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966).

Third, the duties of the position do not appear to constitute the duties of a religious occupation as contemplated by the regulations. Music is a component of the worship services of many religious denominations. However, the performance of music for a religious organization is not considered a qualifying religious occupation for the purpose of special immigrant classification. 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 church pianist be a member of the employer's denomination or that he or she participate in the worship services, beyond providing the musical direction. The duties of the position are not necessarily dependent on any religious background or prescribed theological education. Nor is the performance of the duty directly related to the creed and practice of the denomination. Accordingly, it must be concluded that the petitioner has failed to establish that the position of choir director constitutes a qualifying religious occupation within

the meaning of section 101(a)(27)(C) of the Act.

The petitioner also must establish 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 August 16, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least August 16, 1998.

The petitioner asserted that the beneficiary was employed as a full-time pianist by the [redacted] in Korea from February 1997 to March 1999. The petitioner asserted that the beneficiary volunteered as church pianist at its facility since her admission in February 1999.

On review, it must be concluded that the petitioner has failed to overcome the director's concerns. First, the petitioner failed to provide verification of the beneficiary's alleged foreign employment. The Service has no means to verify a letter purportedly submitted by a foreign church. The Service must instead rely on written verification from authorized officials of the United States denomination who can testify that the alien's credentials as a religious worker have been reviewed and recognized. A simple statement from an official of an individual church is considered, but is insufficient to satisfy the burden of proof standing alone. Therefore, the petitioner has not established that the beneficiary was continuously carrying on a religious occupation from at least August 1998 to February 1999.

Second, the beneficiary's claimed donation of voluntary services to the United States church since February 10, 1999 is insufficient to establish that the beneficiary was engaged in a religious occupation. The simple donation of incidental voluntary services to one's church is not considered engagement in a religious occupation and such experience does not constitute the requisite continuous work experience in a religious occupation.

A petitioner must also demonstrate its 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 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 annual reports, federal tax returns, or audited financial statements.

The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements that are current as of the date of filing the petition. Therefore, the petitioner has not satisfied the documentary requirement.

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.