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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]

AUG 29 2003

File: [redacted] Office: VERMONT 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:

SELF-REPRESENTED

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 Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church affiliated with the Seventh Day Adventist denomination. The petitioner 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 a pianist and choir director.

The director denied the petition, finding that the petitioner failed to establish that it is a qualifying religious organization, that the offered position qualifies as a religious occupation or vocation for the purpose of special immigrant classification, that the beneficiary has had the requisite two years of continuous experience in a religious occupation, and that it has the ability to pay the proffered wage.

On appeal, the petitioner submits additional documentation and a statement in support of the appeal.

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 beneficiary is a 35-year old native and citizen of the Dominican Republic. The beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on February 3, 2000.

The first issue to be addressed in this proceeding is whether the petitioner is a qualifying religious organization.

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).

The petitioner provided the Bureau with a letter from the Internal Revenue Service (IRS) indicating that the General Conference of Seventh Day Adventists was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code on the basis that it is a religious organization. The director determined that the petitioner failed to establish that the petitioner qualifies as a tax-exempt religious organization because the address on the IRS letter is different than that of the petitioner's address. On appeal, the petitioner provides the Bureau with a letter from an official of the Greater New York Seventh Day Adventist (SDA) Conference stating that the petitioner is covered by a group-exemption granted to the SDA. In review, the petitioner has established that it is has the appropriate tax exempt recognition and is a qualifying organization.

The second issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation or vocation for the purpose of special immigrant classification.

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 or vocation 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 Bureau 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 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 the instant case, the petitioner asserts that "as Pastor of this Church, I'm an authorized official of the religious organization in the United States, and . . . I certified that [the beneficiary] was hired as our pianist and Choir Director based on . . . met qualifications."

After a review of the record, it is concluded that the petitioner has not established that the position of pianist and choir director constitutes a qualifying religious occupation.

First, the petitioner failed to establish that the proffered position is a traditional full-time salaried 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's pastor is not an authorized official of the denomination, so his statements, while considered, are insufficient evidence.

Second, the petitioner failed to establish that the duties of the proffered position are directly related to the religious creed of the denomination. The petitioner stated that the duties consist of playing the piano during church meetings and choir rehearsals, and selecting and preparing the musical hymns that are played in church ceremonies. The petitioner failed to establish that these duties are directly and integrally involved in the religious creed of the

petitioner's denomination.

The next issue to be addressed in this proceeding is whether the petitioner established that the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

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 2, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation or vocation since at least May 2, 1999.

In response to a request for additional evidence, the minister of the petitioning church wrote the Bureau that:

> [The beneficiary] has been employed by our Church, Spanish Convent SDA, mainly as our pianist and Choir Director since May 2000. We expect to keep her for many more years. At the present, she is paid a $250.00 weekly salary.

The director concluded that the petitioner had failed to establish that the beneficiary had been continuously engaged in a religious occupation for the two-year period immediately preceding the filing of the petition. The AAO concurs.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding the filing of the petition. The petitioner's pastor wrote the Bureau that the beneficiary had been employed by the petitioner since May 2000, one year prior to filing the petition. The petitioner failed to offer any corroborating evidence such as W-2's or certified tax records. The petitioner also provided the Bureau with a letter from a Dominican Republic church stating that the beneficiary had served as its associate pianist in the years 1986 to 1998. The letter fails to indicate whether the beneficiary was employed in a full-time or paid capacity. In any event, the evidence is insufficient to establish that the beneficiary had been continuously employed in a qualifying religious occupation for the two years immediately preceding the filing of the petition.

The final issue to be addressed in these proceedings is whether the petitioner established that it has the ability to pay the proffered wage.

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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 provided the Bureau with unaudited financial statements. The director determined that the petitioner failed to establish that it has the ability to pay the proffered wage. The AAO concurs. The petitioner failed to provide evidence of its ability to pay in the form required by the regulation.

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.