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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



JUL 07 2005

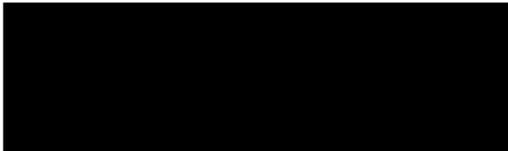
File:  Office: VERMONT SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:



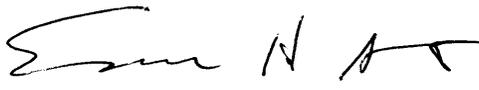
INSTRUCTIONS:

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 Methodist denomination. 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 director.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously engaged as a religious worker on a full-time basis for at least the two years preceding the filing of the petition. The director further found that the petitioner failed to establish that the proffered position qualified as that of a religious worker.

On appeal, counsel for the petitioner asserts that there is sufficient evidence on the record to establish that the position qualifies.

The record of proceeding consists of a petition and supporting documents, the director's request for additional evidence and the petitioner's response, the director's decision, and appeal documents.

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 is a member of the United Methodist denomination. The beneficiary is a citizen of Venezuela. The evidence on the record indicates that the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on November 30, 1995 and as a R-1 religious worker nonimmigrant on February 20, 2000.

The first issue to be addressed in this proceeding is whether the beneficiary had been continuously engaged as a music director for the two-year period immediately 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 April 30, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously engaged as a music director since at least April 30, 1999.

In this case, a pastor of the petitioning church wrote the Bureau that:

[The beneficiary] occupies the position of music director on a full-time basis. He has held this position for three years. He studies music . . . in Venezuela from 1977 to 1985. His studies included four years of piano and theory, in addition to reading music and harmony. Since 1995, [the beneficiary] has taught and played music for the United Methodist Church. . . .

[The beneficiary] is very well versed in Bible studies. He taught the Bible in Venezuela and has been teaching the bible at the United Methodist Church since his arrival in the United States. He conducts the adult choir and organized the children's choir, ages 5 to 12. He plays the piano for both groups and conducts the congregation n worship in the piano and organ. He teaches bible to youth and children and assists the pastor in Bible Studies to adults. He participates in

the coordination of Vacation Bible School, the Sidewalk Sunday School (an outreach program for unchurched children), selects the music for Sunday worship, makes music arrangements to adjust them to the different voices of the choirs, plays the piano and/or the organ during Sunday worship, plays the piano on weddings, plays piano during special activities, travels with the choir to other states and other churches.

* * *

[The petitioner] would like to continue to employ [the beneficiary in the full-time position of music director and Bible Instructor. He will receive from the parish an annual salary of \$32,000.00 plus housing and fringe benefits.

In a request for additional evidence, the director requested the petitioner to submit evidence that establishes that the beneficiary had the continuous two years full-time experience.

In response, a pastor of the petitioner wrote that the beneficiary had been ministering fulltime with the petitioner since December 10, 1998 as Music Director. The pastor wrote that:

Since [December 1998, the beneficiary] and his family have been provided with free housing. On December 23, 1999, we began to provide a parsonage for him and his family including utilities, insurance and trash removal at an estimate [sic] cost of at least \$1,000.00 per month. On February 207, 2000, the Administrative Board decided to provide [the beneficiary] with a stipend of \$200.00 per month. This amount was increased to \$250.00 on January 22, 2002.

The director found that the evidence on the record insufficient to establish that the beneficiary has the required two years of qualifying experience. The AAO concurs. In the absence of corroborating evidence such as certified tax documents for the entire two year period immediately preceding the filing of the petition, the petitioner failed to establish that the beneficiary has the two-years of qualifying experience. A review of the record shows that the beneficiary has not been compensated at the proffered rate of \$32,000 plus housing during the two-year period prior to the filing of the petition.

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 filing. The regulations are silent on the question of volunteer work satisfying the requirement. The regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they

may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines a lay religious occupation, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been continuous salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, the Service must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. For all these reasons, the Service holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

The second issue to be addressed in this proceeding is whether the proffered position of music director is a qualifying religious occupation.

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 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 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 non-qualifying 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 Bureau 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 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, the petitioner has not established that the position of music director is traditionally a permanent, full-time, salaried position at its facility or in the denomination at large. The testimony of the pastor of the individual church is considered, but is insufficient to establish the claim. Merely 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 did not submit verification of traditional positions in the church from an authorized official of the denomination. Therefore, it must be concluded that the petitioner has failed to overcome the objections of the director.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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.