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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

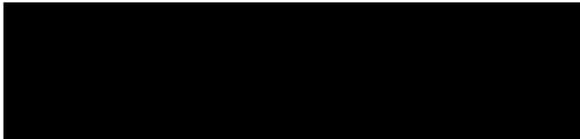
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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 MASS, 3/F

Washington, D.C. 20536



File: 

Office: Nebraska Service Center

Date: **MAY 14 2003**

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:



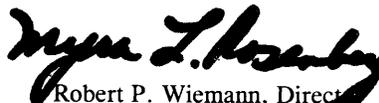
INSTRUCTIONS:

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.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office 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 for him to serve as the "director of music and assistant pastor in charge of music."

The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation and that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel for the petitioner submits a brief arguing that the beneficiary's position as an assistant pastor and director of music does qualify as a religious occupation. Counsel argues that the audited report for years ending 1999 and 2000 demonstrates the petitioner's ability to pay the proffered wage.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in § 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 first issue raised by the director in this proceeding is whether the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition.

8 C.F.R. § 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner stated that the beneficiary would be paid \$32,000.00, plus benefits. The petitioner provided an independent auditor's report for 1999 and 2000 which indicates total revenues of \$544,004 in 1999 and \$632,284 in 2000. Expenditures of \$394,410 for 1999 and \$537,449 in 2000. The auditor's report appears sufficient to overcome the director's objection.

The second issue raised by the director is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petition was filed on April 16, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as an assistant pastor of music from April 16, 1999 until April 16, 2001. The record indicates that the petitioner last entered the United States as a B-2 visitor on January 25, 1997. The record reflects that the beneficiary remained beyond his authorized stay and has resided in the United States since such time in an unlawful status. The petition, Form-360, indicates that the beneficiary has never been employed in the United States without permission.

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

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

In response to a request to additional evidence, the petitioner asserted:

As far as carrying out ministerial duties, he is ordained in this Church to exercise all the authority that would be granted a pastor and he has been exercising the same.

The petitioner further asserted that a copy of the certificate or ordination was included as evidence. As noted by the director in his decision, the record does not contain said certificate.

In this case, the petitioner has not established that the beneficiary is qualified as a minister and has not established that he was carrying on the vocation of a minister since at least April 16, 1999. For this reason, the petition may not be approved.

The third issue raised by the director 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 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 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 beneficiary's position, director of music, is described by the petitioner as follows:

will conduct all musical rehearsals and practices which could be several times a week depending on the specific needs and special services that may come up. He will conduct the musical aspects of the Sunday service and the Wednesday services. He will also conduct different services as the season and occasion required, this will include wedding services, christening services, dedication services, Thanksgiving services, Christmas, Easter, and other notable celebrations that our practice and theology recognizes and marks. He will have general and directorate oversight for the music teaching ministry which is a large and intricate one. He will develop music by writing songs composing some and designing instrumental and technical compliments for the music. He will direct the Church's initiative to evolve the music ministry into a record making label and a touring musical group around the world with the assistance of his deputy. He will also participate in the organization of a curriculum for the music-teaching ministry and sometime [sic] give instructions on the same.

Included in the record is a certificate from Winneba School of Music in Ghana issued to the beneficiary on March 23, 1987 for undergoing one and a half years of training in music along with letters from the Love Community Baptist Church and the United Rama Church in Ghana attesting to the beneficiary's duties as a music instructor from 1990 to 1996 and 1997 respectively.

The record in this matter is insufficient to establish that the proposed position of "director of music" constitutes a qualifying religious occupation."

First, the petitioner submitted no documentation that the position is a traditional full-time paid 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).

Second, the petitioner gave no indication that it has ever employed a member in this capacity in the past and gives no explanation of its decision to do so at this time.

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 a music director 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 music director constitutes a qualifying religious occupation within the meaning of section 101(a)(27)(C) of the Act.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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.