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U.S. Department of Homeland Security
Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date: NOV 24 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant 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:

[Redacted]

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 Citizenship and Immigration Services (CIS) 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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a music director. The director determined that the petitioner had not established that the position offered constitutes a qualifying religious occupation.

On appeal, counsel argues that the director has relied on too strict an interpretation of the term "religious occupation."

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, 2008, 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, 2008, 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 sole issue in this proceeding is whether the position offered to the beneficiary constitutes a qualifying religious occupation. The regulations at 8 C.F.R. § 204.5(m)(2) contain the following pertinent definitions:

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

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 petitioner has argued that music is an essential component of religious services in the denomination's churches. This, by itself, does not establish that every performer of church music works in a religious occupation; otherwise, entire congregations could so qualify simply by virtue of singing hymns together. That being said, the petitioner has amply demonstrated that the beneficiary is not merely an active member of the congregation, or an organist or choir leader who participates in services and devotes a few hours a week to rehearsal while pursuing secular employment for the majority of his working hours.

The record shows that the beneficiary is an official of the church's governing council, with duties that extend beyond rehearsing and conducting music for services. The record also establishes that the beneficiary has a long history of employment as the musical director of Presbyterian churches in the Cincinnati area, indicating that the position is a common one in the denomination, rather than a normally volunteer function that the petitioner has labeled an "occupation" for immigration purposes. Forms W-2 in the record confirm that the petitioner has in fact paid the beneficiary for his work, and the record contains an executed employment agreement establishing benefits including paid leave and medical insurance. This demonstrates a *bona fide* employer/employee relationship, rather than token, stipend, or subsistence payments in return for occasional or short-term services. The position appears to qualify as professional in nature, given the petitioner's credible assertion that the position requires at least a bachelor's degree.

In sum, the preponderance of the evidence in the present proceeding is consistent with the claim that the beneficiary's occupation relates to a traditional religious function rather than the minimal commitment of a volunteer member of the congregation. Because the duties of a music director may vary from church to church, particularly among congregations of significantly different sizes, this finding is specific to the matter at hand and should not be construed as a blanket finding that every alien with the job title of church music director qualifies for the special immigrant religious worker classification sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.