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U.S. Citizenship  
and Immigration  
Services

CI



DEC 07 2004

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date:  
SRC 03 232 51163

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Roman Catholic 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as its director of music ministry. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, or that the beneficiary entered the United States with the intention of performing religious work.

On appeal, the petitioner submits a short statement answering some of the grounds for denial.

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 Revenue 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 regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on August 22, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a director of music ministry throughout the two years immediately prior to that date.

Rev. [REDACTED] pastor of the petitioning church, asserts that the beneficiary began working for the petitioner in September 2000, an assertion also made by [REDACTED] the petitioner's office manager.

During the qualifying period, on December 20, 2002, the beneficiary earned a Master of Business Administration degree from Lenoir-Rhyne College. It is not immediately clear what purpose an M.B.A. degree serves for the director of a music ministry.

Documents in the record show that the beneficiary earned a Master of Arts degree in Religious Studies from [REDACTED] on May 19, 2001, shortly before the qualifying period began. The beneficiary's transcript from the seminary, several hundred miles from the petitioning church in Hickory, North Carolina, indicates that the beneficiary took two courses and an internship during the semester that ran from August 21 to December 18, 2000. Nothing in the record identifies [REDACTED] as a correspondence or "distance learning" school. The transcript does not indicate where the beneficiary served his internship. Late 2000 falls outside the qualifying period, but this does not prevent us from raising questions of credibility, when the petitioner claims that the beneficiary was working in North Carolina while simultaneously studying in Kansas.

The director instructed the petitioner to submit documentary evidence to corroborate the petitioner's claims regarding the beneficiary's past experience. In response, the petitioner indicates that the beneficiary served an internship, 25 hours per week, as "Creating Manager of Substandard Inventory" for the city of Hickory from August 2001 to July 2002. Form W-2 Wage and Tax Statements in the record show that the city paid wages to the beneficiary in 2001 and 2002. Another Form W-2 from 2001 shows income from Merchants Distributors, Inc. The petitioner has also submitted a copy of the beneficiary's 2001 income tax return, on which the beneficiary identified his occupation as "Information Consultant" for Infogrand International, which appears to have been the beneficiary's own business.

The director denied the petition, citing *Matter of B*, 3 I&N Dec. 162 (CO 1948), which indicated that, when one is considering whether an alien's religious work is "continuous," one must consider whether the alien took up any other occupation or vocation. The beneficiary in this instance received income from three other sources during the qualifying period. Therefore, the director concluded that the beneficiary "has not been performing the proffered job 'continuously' for the two years prior to filing Form I-360."

On appeal, the petitioner states "the beneficiary has in fact been continuously employed in the position full-time as an H-1B since **January 23, 2001**. Thus, the **two-year continuous experience** standard is satisfied. The beneficiary as never ceased his full time employment at" the petitioning church (emphasis in original). The petitioner does not address the director's finding that the beneficiary's multiple secular jobs interrupt the continuity of the beneficiary's work for the church.

The next issue is whether the petitioner has extended a qualifying job offer. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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 regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Citizenship and Immigration Services 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.

The petitioner's initial submission contains little information about the position offered to the beneficiary. Accordingly, the director instructed the petitioner to submit additional information and evidence to demonstrate that the position qualifies the beneficiary for classification as a special immigrant religious worker.

In response to the notice, the petitioner submits a detailed job description, indicating that the position of director of music ministry involves pastoral, liturgical, musical, organizational, and interpersonal skills. The director, in denying the petition, emphasized the beneficiary's "administrative functions" and "other duties," and asserted that these "additional duties . . . are more of a secular nature." The director also stated "[i]t cannot be determined that this is a full-time, permanent job offer."

On appeal, the petitioner maintains "**the position is full-time** and permanent averaging 40 hours per week." The record shows that the petitioner paid the beneficiary \$29,406 in 2002, an amount consistent with full-time employment. As for the permanence of the job offer, there is nothing in the record to suggest that the petitioner intends to terminate the beneficiary's employment after a short term. Certainly, there are factors in the record which call into question *the beneficiary's* long-term intentions, such as his recent pursuit of an M.B.A. degree and his secular employment and internships, all of which point to the beneficiary's ongoing pursuit of occupational training that is not applicable to religious work; but these factors do not relate to the job offer as such. We therefore agree with the petitioner on the matter of full-time employment.

The petitioner's appeal, however, does not address the director's finding that many of the beneficiary's duties are administrative or secular in nature. The position involves a combination of secular and religious duties. The petitioner has not shown that the beneficiary's religious duties preponderate to an extent that would show that the position is, fundamentally, a religious occupation.

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(III) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(III), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, the beneficiary entered the United States as an F-1 nonimmigrant student. Thus, the director concluded, the beneficiary did not enter the United States for the purpose of working as a religious worker.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act.

That being said, there are other factors which call into question the beneficiary's intentions. As noted above, the beneficiary completed an M.B.A. degree in December 2002; he served a secular internship with the city of Hickory; and he operated his own business as an "information consultant." These recent, pervasively secular activities call into question the extent to which the beneficiary intends to continue his religious work in the future.

Upon review of the record of proceeding, another issue affecting the beneficiary's eligibility reveals itself. The petitioner states "[t]he beneficiary's ordination into the rank of Sub-Deacon is very helpful," but the

record shows that the beneficiary's 1998 ordination as a sub-deacon took place under the auspices of the

8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to establish that, throughout the two-year period immediately preceding the petition's filing date, the beneficiary was a member of the religious denomination that seeks to employ the alien. The beneficiary's ordination as a sub-deacon is strong evidence that, as of 1998, the beneficiary was a member of the [REDACTED]. The record contains no documentation to show when (or if) the beneficiary subsequently became a member of the [REDACTED].

One does not officially become a member of the Roman Catholic Church by attending services at a Catholic Church, and nothing in the record suggests that such membership is automatically conferred via employment. There is no evidence regarding the beneficiary's confirmation, or his completion of the catechuminate by which non-Catholics join the church.

Because the beneficiary is known to have belonged to a different religious denomination as recently as 1998, and because there is no evidence to show that he has since formally joined the Roman Catholic Church, we find that the petitioner has not satisfied the requirement of demonstrating the beneficiary's membership in the denomination throughout the qualifying period. Apart from this new basis of ineligibility, the petitioner has not overcome the director's findings.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> While there is an Armenian Rite of the Catholic Church, this is not the same as the Armenian Church to which the beneficiary belonged in 1998. The Armenian Church is entirely separate from the Roman Catholic Church, and is subordinate not to the Pope, but to supreme officials called *catholicoi*.