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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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DEC 07 2004

FILE: [Redacted]
WAC 02 266 55062

Office: CALIFORNIA SERVICE CENTER

Date:

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:



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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a soprano. The director determined that the petitioner had not established that (1) the position qualifies as a religious occupation; (2) the beneficiary had the requisite two years of continuous work experience as a soprano immediately preceding the filing date of the petition; or (3) the beneficiary would not be solely dependent on supplemental employment or solicitation of funds for support.

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 first issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates 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. 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.

Rev. [REDACTED] (spelled [REDACTED] in some documents), priest of the petitioning church, states that the beneficiary "is the soprano of our choir, and we desire to enlist her professional services on a permanent basis." Rev. [REDACTED] does not describe the beneficiary's duties in detail, stating only that the beneficiary "also helps out with chores on church grounds and cares for the parishioners' children."

The director instructed the petitioner to submit further evidence to establish that the beneficiary's intended position qualifies as a religious occupation. In response, the petitioner refers to the beneficiary as the "Soprano Leader" and lists the following duties:

- Works with the Priest to plan music for all Liturgies, Vespers, Holy Day, Funerals, Weddings, and other services as scheduled.
- Performs the Soprano Leader during the religious service (liturgical music, hymns and related music for Sunday Service).
- Coordinates, schedules, chooses and leads the entire music program and the rehearsals (psalms, hymns, spiritual songs)
- Engages the congregation and then lets them sing.
- Helps out with the chores on church grand grounds.
- Takes care of parishioners' children and teaches them the hymnody and other religious songs.

Rev. [REDACTED] states that the beneficiary's weekly work schedule involves 24 hours of Liturgies and Vespers, nine hours of rehearsals, and "approximately 5 hours a week with the children," for a total of 38 hours per week. Rev. [REDACTED] indicates that the petitioner's "choir has 6 members." Rev. [REDACTED] asserts that the beneficiary's "music serves the liturgy and forms a necessary or integral part of the ritual."

The director, in denying the petition, concluded "[t]he duties of the occupation do not have religious significance [or] embody the tenets of that particular religious denomination." On appeal, counsel states: "The beneficiary's duties are primarily religious in nature, not secular. Worship music is an integral part of [the] Romanian Orthodox denomination" (emphasis in original). Counsel observes that the list of qualifying religious occupations includes cantors, and contends "the beneficiary's position is the same as a 'cantor.' This is a singer who sings and chants liturgical music. . . . [A]ttached is a dictionary definition of the word 'cantor.'"

The definition submitted is from Merriam-Webster's web site, <http://www.m-w.com/cgi-bin/dictionary>. The entry actually includes two definitions: "1: a choir leader . . . 2: a synagogue official who sings or chants liturgical music and leads the congregation in prayer." The beneficiary is not "a synagogue official," and there is no indication that a Jewish cantor is identical to "a choir leader"; the existence of two definitions suggests a distinction between the two. In common parlance, the term "cantor" is generally understood to mean a *Jewish* cantor, and it is in this sense that we interpret the regulatory reference to "cantors."

Counsel adds "we have attached three Internet articles explaining the importance of the musical liturgy in Orthodox worship." The three excerpts in the record discuss "the Liturgy" or "the Divine Liturgy," but there is no reference to "the musical liturgy," nor any indication that the liturgy is inherently musical. Rather, the materials submitted indicate that the term "liturgy" applies to the entire church service.¹ Some of the

¹ The same online dictionary cited by counsel offers three definitions of "liturgy": "1 : a eucharistic rite . . . 2 : a rite or body of rites prescribed for public worship . . . 3 : a customary repertoire of ideas, phrases, or observances." The site defines "Divine Liturgy" separately, as "the eucharistic rite of Eastern churches."

materials provided by counsel refer to the "liturgical use" of music, but this establishes only that the liturgy involves music, not that there is a "musical liturgy." Counsel's apparent attempt to equate the term "liturgy" with music is entirely unsupported, and serves only to raise overall questions of credibility.

There is no showing that Romanian Orthodox churches traditionally employ paid, full-time choir leaders, rather than utilizing musically talented volunteer members of the congregation.

The next issue concerns the beneficiary's prior experience. 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 27, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a soprano throughout the two years immediately prior to that date. The beneficiary entered the United States on October 5, 2000, and therefore any showing of the beneficiary's past experience must include the beneficiary's time outside the United States from August to October of 2000.

Rev. [REDACTED] states that the beneficiary "had more than 8 years of continuous work experience as a soprano in our sister church in Romania" before coming to the United States in October 2000, and that the petitioner "will continue to support [the beneficiary] by providing room and board during her period of employment," and that the petitioner "intend[s] . . . in the future, to offer her a salary." A letter from Parohia Sf. Vineri Suceava indicates that the beneficiary worked at the church in Romania "for over 8 years."

Following a request for further evidence regarding the beneficiary's past experience, the petitioner repeats the assertion that the beneficiary worked for room and board, receiving no salary. Parohia Sf. Vineri Suceava states that the beneficiary was "the Soprano Leader in our church" from 1997 "until her departure to our sister church in USA."

The director concluded that the petitioner had not demonstrated that "the beneficiary has been performing full-time work as a Soprano Leader for the two-year period immediately preceding the filing of the petition." The director did not explain this conclusion apart from a general discussion of the policy that qualifying work experience must be full-time and compensated. The petitioner had indicated that the beneficiary worked 38 hours per week in exchange for room and board. Religious work in exchange for room and board, rather than a standard salary, nevertheless constitutes "employment" for immigration purposes. See *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982). Nevertheless, the burden of proof remains on the petitioner, to demonstrate that the room and board were provided as claimed. Otherwise, we would have no meaningful way to distinguish between an alien who actually received room and board, and one who simply claimed to have received room and board. We add that compensation provided in exchange for work need not take the form of cash in order to be considered taxable income.

Counsel asserts that the statute and regulations do not require full-time employment, only that the employment has been continuous. Case law, however, does not indicate that part-time religious work qualifies as continuous. See *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), in which a seminary student who worked nine hours per week was found not to have continuously worked as a minister.

Counsel states that, whether or not the continuous experience must have been full-time, the beneficiary's experience *was* full-time, occupying 38 hours per week. The record lacks documentary evidence to support the petitioner's claims regarding the beneficiary's schedule. The extremely small size of the petitioner's choir ("6 members") further raises the question of whether such a choir could realistically, consistently provide full-time work for the beneficiary. Some of the beneficiary's listed duties, such as child care and "chores on the church grand grounds," are indisputably secular in nature.

The final issue discussed in the director's decision involves the beneficiary's means of support. 8 C.F.R. § 204.5(m)(4) requires the petitioner to demonstrate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. The director determined that the petitioner had not met this requirement, citing bank documents in the record that indicate that the petitioner has low cash reserves, as well as an overdue payment notice from an engineering firm.

It is not entirely clear why the director cited the above documentation as evidence that the beneficiary would be solely dependent on supplemental employment or solicitation of funds for support. The materials appear to be more germane to the question of the petitioner's ability to pay the beneficiary's salary, as required by 8 C.F.R. § 204.5(g)(2).

Of course, when contemplating the petitioner's ability to pay the beneficiary, another issue surfaces which touches on the regulations. 8 C.F.R. § 204.5(m)(4) requires the petitioner to establish the terms of compensation. Rev. Libotean has stated "the Church's council intend that, in the future, besides [use] of the present facilities, to offer [the beneficiary] a salary." The petitioner has not stated the amount of that salary, much less established its ability to pay that salary. The vague assertion that the petitioner intends, eventually, to pay the beneficiary an unspecified salary is hardly a coherent or sufficient offer of employment.

In summary, the record lacks crucial details regarding the beneficiary's claimed employment. Those details that the petitioner has provided either lack corroboration or else appear to lack credibility. The petitioner has not demonstrated that the beneficiary has and will continue to perform qualifying full-time religious work.

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.