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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

41



FILE:



Office: VERMONT SERVICE CENTER

Date: **SEP 23 2004**

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)



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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based 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. 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 religious music director. The director determined that the petitioner had not established that the position qualified as that of a religious worker. The petitioner's motion to reopen/reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

On appeal, counsel submits a brief and additional documentation.

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).

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 perform services 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.

CIS 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.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. 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 petitioner states that the beneficiary's duties will be to conduct the church choir for Sunday services, prepare and revise church music, rehearse with the church's choir, teach religious music to the church's youth choir, and prepare and perform on special occasions such as holidays, weddings, funerals and at revival meetings and services. The petitioner states the proffered position requires an individual with a minimum of a bachelor's degree in music and at least two years of experience or training as a religious music director.

The petitioner also states that the position is a traditional religious function within the Christian church, and that the requirements of the proffered position cannot be filled by "a merely caring and dedicated member of the church." According to the petitioner, the proffered position "requires a specific knowledge and experience of the Christian Church's liturgy in order to function effectively within the context of our Christian services. Thus, our church has never and will not hire anyone who does not have training in Christian religious music and liturgy."

Nonetheless, although the petitioner states that the position of music director is a traditional function within the Christian church, it has not established that the position is a traditional religious position within its own denomination. The petitioner submits no evidence that the position of music director is recognized and defined by the governing body of the petitioner's denomination or that the position is traditionally a permanent, full time, salaried position within the denomination or within the petitioning organization.

Although the petitioner states that it has never hired anyone who did not have training in Christian music and liturgy, the record contains no evidence of any previous hires for the position or that the position existed within the petitioning organization prior to the beneficiary assuming the role. Further, according to the petitioner, although the beneficiary started working for the petitioner as music director in September 1997, it did not pay him a salary until August 2000, almost three years later. The record does not reflect that the beneficiary was engaged full time as music director with the petitioner prior to August 2000.

The petitioner has not established that the position of religious music director is traditionally a full time, permanent and salaried position within its denomination. Therefore, it has not established the position is a religious occupation within the meaning of the regulation.

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 decision of the director will be affirmed. The petition is denied.

ORDER: The petition is denied.