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U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

FEB 24 2005

WAC 03 247 53009

IN RE:

Petitioner:

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]

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 Director, California Service Center, denied the employment-based immigrant visa petition. The matter 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 music director. The director determined that the petitioner had not established that the beneficiary had the requisite two years of membership in the petitioner's religious denomination immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a 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 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) states, in pertinent part:

[The] petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of . . . working in a religious vocation or occupation for the organization or 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.

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. The petition was filed on August 29, 2003. Therefore, the petitioner must establish that the beneficiary was a member of the petitioner's denomination throughout the two years immediately prior to that date.

8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Bona fide nonprofit religious organization in the United States means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

Religious denomination means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

senior pastor of the petitioning church, states “[s]ince 1991, [the beneficiary] has been a member of the Baptist church, a recognized 501(c)(3) nonprofit, religious organization.” From 1999 to 2002, the beneficiary worked for Golden Gate Baptist Theological Seminary, and from 2000 to 2002, the beneficiary was a member of First Baptist Church of San Mateo, where she served as interim minister of music and worship. Pastor states that the petitioner “is a non-profit, conservative, evangelical Protestant church, and is not affiliated with any particular denomination. However, [the petitioner] has many beliefs and tenets in common with other mainstream evangelical denominations, such as Baptist, and often cooperates with these types of churches. . . . [The petitioner’s] beliefs are very similar to the conservative beliefs and tenets of other evangelical organizations, such as Baptists.”

The petitioner thus claims similarity not only with Baptists (and there are numerous Baptist denominations rather than one monolithic Baptist entity), but with “other mainstream evangelical denominations” as well. If we were to accept this logic, the petitioner could file petitions on behalf of aliens from several distinct denominations, which is clearly not consistent with the statutory and regulatory requirements regarding the alien’s membership in the denomination. One could surely identify specific “beliefs and tenets” that are shared between denominations as diverse as the Mormon Church, Christian Science, and the United Church of Christ, but the *differences* between these groups distinguish them as denominations.

Indeed, the petitioner incorrectly implies that there is one, individual Baptist denomination, which the petitioner calls “a recognized 501(c)(3) nonprofit, religious organization.” There are several Baptist denominations in the United States, the largest being the Southern Baptist Convention. While there are common factors which unite all these denominations under the “Baptist” banner, there also exist significant differences in doctrine and practice between Baptist denominations such as, for example, the Baptist Bible Fellowship and the Landmark Baptists.

The director informed the petitioner that the petition would be denied if the petitioner could not show that the beneficiary meets the denominational membership requirement. In response, Pastor [REDACTED] states:

[The petitioning church] does not view itself as constituting a separate denomination. As we stated before, we are a conservative, evangelical Protestant religious organization with a current membership of 800 and just 5 pastors. We do not have a form of ecclesiastical government, a particular kind of worship or other indicia of bona fide religious denominations that separates us from the Baptists. . . .

Currently, several members of our congregation are enrolled as students of Golden Gate Baptist Theological Seminary and Western Baptist Seminary. . . .

In my initial letter, I stated that [the petitioner] is not affiliated with any particular denomination. That statement suffers from an unfortunate confusion of verbs. It is more correct to say that [the petitioner] is not a *member* of any particular denomination and is not governed by the ecclesiastical government of any other denomination. However, [the petitioner] most definitely has a very close relationship with the Baptist denomination and is strongly associated with, and shares, the Baptist creed, doctrine and form of worship. Because we are closely associated with the Baptists, we often cooperate with Baptist churches in the area and accept our Baptist brethren as members of the same conservative, evangelical Protestant church.

Pastor [REDACTED] asserts that "the basic theological tenets of [the petitioner] and the Baptist denomination are indistinguishable." Dr. [REDACTED] professor of Christian Theology at Golden Gate Baptist Theological Seminary, states:

Baptist churches are by definition Christian churches that understand the Biblical model for church governance as stipulating the independence of each individual worshipping congregation and that operate on a congregational model of church governance. All congregationally governed churches that operate on a Biblical mandate and understand baptism to be by immersion and for believers only are "Baptist" churches. The [petitioning] Church is a baptistic church and in moving from the First Baptist Church of San Mateo to [the petitioning church, the beneficiary] was moving from one baptist ministry to another.

The issue is not whether the petitioner is "baptistic" or "baptist" with a lowercase "b," but whether any formal affiliation exists between the petitioner and any Baptist denomination. (As noted above, the term "Baptist" encompasses a family of denominations rather than one comprehensive entity.) The small-b "baptist" description is, at best, a general label (akin to "Protestant") rather than evidence of formal affiliation.

The director denied the petition, in part because the petitioner has not established any formal affiliation between the petitioning church and the Southern Baptist denomination to which the beneficiary belonged until mid-2002. On appeal, counsel asserts that the petitioner "is a bona fide organization affiliated with . . . the Baptist denomination." Counsel asserts that this affiliation complies with 8 C.F.R. § 204.5(m)(1).

The regulation at 8 C.F.R. § 204.5(m)(2), however, states: "*Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations." The petitioner has not demonstrated that it is "closely associated" with

the Southern Baptist denomination in the sense contemplated by regulation. Counsel, on appeal, simply claims, repeatedly, that the petitioner is “affiliated” or “closely associated” with “the Baptist denomination,” without ever defining those terms. We do not find that the ability to list shared traits or specific points of doctrine is sufficient to establish qualifying affiliation or close association.

Furthermore, 8 C.F.R. § 204.5(m)(1), the regulation cited by counsel on appeal, indicates that the alien must have “been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States” and that the alien must be working “at the request of the organization.” These two phrases refer to the same “organization,” i.e., an organization owned or controlled by the denomination to which the beneficiary has belonged for at least two years. The Southern Baptist Convention is not the petitioner in this proceeding, nor is there any indication that the beneficiary works for the petitioner at the request of the Southern Baptist Convention or any constituent church thereof. Rather, the petitioner works at the request of a church with no formal ties to the beneficiary’s denomination.

At the outset of the petition, the petitioner claimed no special ties to the Baptist church. Rather, Pastor [REDACTED] had stated that the petitioning church “has many beliefs and tenets in common with other mainstream evangelical denominations, such as Baptist, and often cooperates with these types of churches.” In this context, the petitioner has attempted to demonstrate that it is “closely associated” with the Southern Baptist denomination, but the early reference to “other mainstream evangelical denominations,” plural, suggests that the petitioner could just as easily claim a similar close association with some other evangelical Protestant denomination, such as (for instance) the Lutheran Church – Missouri Synod or the Presbyterian Church in America,¹ were the petitioner to file another petition on behalf of an alien from one of those denominations.

We note that the legislative history shows that Congress placed particular emphasis on the denominational membership requirement as being one of “a number of safeguards . . . to prevent abuse.” H.R. Rpt. 101-723, at 75 (Sept. 19, 1990). This, in our view, precludes a situation where a church can simply place itself outside of any established denomination, while at the same time claiming “affiliation” with several such denominations. The ability of a single church to file petitions for aliens of many denominations would, we find, represent the type of “abuse” contemplated in the legislative history.

We note that the denominational membership issue is not a permanent or indefinite bar to eligibility; it would not come into play in the context of a petition filed more than two years after the beneficiary became a member of the petitioning church.

The next 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. 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.

Citizenship and Immigration Services 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.

¹ Like “Baptist,” the terms “Lutheran” and “Presbyterian” encompass multiple distinct denominations.

Pastor [REDACTED] lists and describes the beneficiary's responsibilities as music director:

Worship Choir Leadership

The Music Director directs two adult choirs for Sunday worship and leads rehearsals on Sunday mornings and afternoons. . . . She is also responsible for organizing joint choir presentations for seasonal events . . . and special events. . . .

Worship Service Organization

The Music Director plans, directs and leads Sunday worship services, as well as special and seasonal events. Responsibilities also include selecting music for the event, contracting musicians, and facilitating worship services.

Instrumental Ensembles

To ensure quality music, the Music Director is responsible for training and supervising the instrumental musicians. . . . The Music Director also creates new ensembles, such as hand bell ensemble and chamber ensemble for special events including Christmas and Easter. Responsibilities also include orchestrating music for the ensembles.

Choirs

The Music Director trains and supervises adult choirs and creates new choirs, such as a children's choir, a men's choir, a women's choir and youth choirs for special events. Responsibilities also include selecting music, organizing the music library, as well as the distribution, copying, and filing of music.

Visitation

The Music Director is responsible for making personal visits to the music ministry personnel . . . to gather and evaluate an individual's gifts and opinions related to music ministry, to get to know people, to encourage spiritual growth, and recruit more volunteer music workers.

Worship and Music Instruction

To elevate music skills, the Music Director is responsible for teaching Sunday school classes and evening classes related to worship and music. . . .

Music Ministry Development

The Music Director is responsible for working with [the petitioner's] Pastors to develop the church music ministry and to improve worship experiences.

Meeting Attendance

The Music Director is a spiritual leader whose role impacts the whole church. Thus, [the beneficiary] is required to attend various meetings, such as prayer meetings, fellowships, choir officer meetings, special events (i.e., Easter and Christmas), Pastoral Staff meetings, and Elder-Deacon Board meetings.

The director, in denying the petition, stated "[f]ields related to music . . . typically do not qualify as religious occupations because the jobs are essentially secular rather than traditional religious functions. Volunteers from among the congregation . . . typically perform these duties. . . . These duties are not necessarily dependent on any religious background or religious denominations." It is true that, in many churches, church

music is an entirely volunteer activity, and the unpaid or part-time organist, pianist, or choir director is often employed elsewhere in a secular occupation that may or may not relate to music. That being said, however, it does not appear to be the case that the performance or arrangement of church music is always, invariably, a secular undertaking superimposed on a religious setting. The facts must be considered case by case.

In this instance, the director acknowledges that the beneficiary performs duties beyond rehearsing and performing music. The director, however, determined that this was a factor working *against* the beneficiary, because these duties show that “the beneficiary is not working full time [in] music ministry.” The director, therefore, offers the contradictory findings that (1) performing music is not a qualifying pursuit, but (2) the beneficiary is not spending enough time performing music. Here, the beneficiary’s ancillary duties show a level of involvement in religious activities that extends beyond simply providing musical accompaniment to church services.

The director apparently did not take into account that the beneficiary holds Master of Church Music and Doctor of Musical Arts degrees from the School of Church Music of the Southern Baptist Theological Seminary. These graduate-level degrees indicate that the Southern Baptist denomination regards “church music” as being a distinct area of study, beyond musical aptitude that happens to be used in a religious context. While not a Southern Baptist institution, the petitioning church appears to share this view. The duties ascribed to the beneficiary are not simply those of “a church member merely practicing his or her religion.” The director stated that the beneficiary’s work consists of “duties of lay persons,” but religious occupations are, by regulatory definition, distinct from ministerial positions held by ordained clergy. The fact that the beneficiary is a lay person, i.e., not an ordained minister, is not a disqualifying factor here. Nothing in the term “lay person” precludes employment in a religious occupation by a church or other religious organization. While the denial remains in place for reasons discussed elsewhere in this decision, we hereby withdraw the director’s finding that the beneficiary’s position does not qualify as a religious occupation.

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.