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U.S. Citizenship  
and Immigration  
Services

*CI*

MAY 03 2005

[Redacted]

FILE: [Redacted]  
SRC 01 191 58385

Office: TEXAS SERVICE CENTER Date:

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

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)

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.

*Maigelson*

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as an "organization dedicated to the promotion and organization of seminars, conferences and music concerts for Hispanic Christian pastors, leaders, and churches in the U.S. and Latin America." 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 international coordinator of events. The director determined that the petitioner had not established that the position qualified as that of a religious worker.

Counsel indicated on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, that she was submitting a separate brief and/or evidence. However, no additional documentation was submitted with the appeal. Counsel did not respond to the AAO's request of March 22, 2005 to submit any documentation included with the appeal. Therefore, the record will be considered complete as presently constituted.

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).

Pursuant 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

According to the petitioner, in the proffered position, the beneficiary will "do some teachings and be in charge of the logistics of the events." In a letter dated June 10, 2003, the petitioner's vice president stated that, in the proffered position:

[The beneficiary] has been organizing events in the U.S. and Latin America, and has prepared all the logistics for our teams that have been traveling. He has been in charge of the administration for our main office. He has been in charge of providing information to our Internet department so they can update the web page. He has been responsible for handling our president's schedules and he has been answering every invitation that he and other persons related to our ministry receive. He also contacts pastors and leaders who help organize all our events in and out of the U.S.

As Events Director, [the beneficiary] has continuously helped raise funds by soliciting donations to support our events and projects. He also has coordinated with TV and media networks in order to broadcast our events. He has also coordinated the publishing of magazine articles and books of the ministers we work with.

Presently, [the beneficiary] is just a volunteer and he has received a [sic] support from CanZion Producciones S.A. de C.V in Mexico as an offering of \$30,000 for 2001 and \$54,000 for 2002.

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 would reasonably be expected to 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. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (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.

The duties of the proffered position are comprehensively administrative and secular in nature. The petitioner has not established that any of the duties involve religious activity. Although the petitioner stated that the beneficiary will "do some teachings," and on appeal, counsel states that the beneficiary "would be working as a religious teacher," the evidence does not reflect that teaching constituted any part of the duties that the beneficiary performed in the position in the past.

The evidence does not establish that the proffered position is not primarily secular in nature. Therefore, the petitioner has not established that the position qualifies as a religious occupation within the meaning of these proceedings.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicates that it will pay the beneficiary \$54,000 per year. The petition was filed on September 25, 2002. Therefore, the petitioner must establish its ability to pay as of that date. The petitioner submitted a copy of its year 2002 Form 990, Return of Organization Exempt from Income Tax, which reflects that the petitioner had net assets at the end of the year of \$1,748. The petitioner's Form 990 also does not reflect that it had any employees in 2002. The petitioner's 2002 Form 990 also reflects in Part IV, Balance Sheets, total liabilities and net assets/fund balances of \$28,279. The petitioner's Form 990 does not reflect that it had the ability to pay the beneficiary the proffered wage in 2002.

The evidence does not establish that the petitioner has the ability to pay the beneficiary the proffered wage as of the priority date. This deficiency constitutes an additional ground for denial of the petition and dismissal of the appeal.

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.