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



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 24 2007  
WAC 06 027 53037

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*  
Robert P. Wiemann, Chief  
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 sustained and the petition will be approved.

The petitioner is a Christian church affiliated with the General Association of Regular Baptist Churches (GARBC). 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 minister/director, teacher and counselor. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits additional letters and other materials, as well as arguments from counsel.

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 sole 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.

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 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.

Pastor of the petitioning church, described the position offered to the beneficiary:

We are offering [the beneficiary] a permanent position in our church as a Music Minister/Director, Teacher and Counselor. In this capacity, she will conduct choir rehearsal, direct the choir during performances (regular worship or special events such as Christmas, Easter, weddings, funerals, baptisms and revivals), act as accompanist on piano, select and arrange pieces of music to be performed, in charge of conducting music seminars, junior and teen choirs and produce our musical plays. She will also be a Sunday School and Bible school teacher and counsel children in need [when] necessary.

Transcripts reproduced in the petitioner's initial submission show that the beneficiary studied at the Baptist Bible Seminary and Institute at Santa Clara College, Manila, Philippines, from 1986 to 1989, and at the Philippine Women's University from 1990 to 1996. The beneficiary took music classes at both institutions, but she took religious classes only at Santa Clara.

On March 21, 2006, the director instructed the petitioner to "[e]xplain how the duties of the [beneficiary's] position relate to a traditional religious function," and to "[s]ubmit a copy of the [petitioner's] articles of incorporation that have been date-stamped, 'Endorsed - Filed,' by the appropriate state official."

In response, the petitioner submitted a copy of its endorsed articles of incorporation and a letter from [REDACTED], who stated:

The position of Music Minister/Director relates to a traditional religious function, as music is an integral part of our worship services and other church-related activities. . . .

The occupation of Music Minister/Director requires a person not only with a Degree in Music, but someone who understands and believes in our religion. . . .

The level of training and education required is a Bachelor Degree in Music as well as prior working experience in the field. [The beneficiary] is a graduate of the Conservatory of Music from Philippine Women's University with a Bachelor of Music Degree, Major in Music Education and Voice and Minor in Piano. She has over five years of experience teaching music and as Directress of the school and church choirs. In addition she is a graduate of Basic Bible course at Baptist Bible Seminary and Institute in the Philippines.

[The beneficiary] is engaged in religious-oriented activities outside of playing the piano and other musical events. For example, as a teacher, she teaches the Home Bible Study classes and Sunday School.

The director denied the petition on July 17, 2006, stating:

There is no evidence in the [academic] transcripts showing that the beneficiary took any music classes concerning religious music. . . .

The petitioner submitted a copy of the requested Articles of Incorporation of [the petitioning] Church. A review of this document fails to show that the proffered position is a religious occupation. . . .

The petitioner submitted insufficient documentation to show that the position is a traditional, full-time occupation within its denomination. The Articles of Incorporation made no reference to the position, there [were] no letters from authorized officials of the religious organization in the United States, or other evidence indicating that the duties are directly related to the religious creed of the denomination, and 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. Furthermore, there is no evidence in the school transcripts relating to church music.

On appeal, counsel states: "The Articles of Incorporation of a Religious organization never state that certain positions within the church are religious occupations, but only that the organization is organized for religious purposes pursuant to Section 501(c)(3) of the Internal Revenue Code." Counsel is correct that a religious organization's organizing instrument need not contain a comprehensive discussion of religious occupations within the denomination. When the director issued the request for evidence, there was no indication that the director intended for the articles of incorporation to serve as evidence regarding the beneficiary's occupation. Rather, the director apparently requested that document in order to establish the petitioner's corporate standing. The director cannot reasonably expect the petitioner's articles of incorporation to serve as evidence in a completely different sense than that for which it was intended.

Similarly, the director did not previously request "letters from authorized officials of the religious organization in the United States." The director had instructed the petitioner only to "[e]xplain how the duties of the position relate to a traditional religious function." The director subsequently faulted the petitioner for failing to provide particular evidence that the director had not previously specified.

The director's decision was the first time the petitioner was advised of the importance of "letters from authorized officials of the religious organization in the United States." On appeal, the petitioner submits letters from two such representatives. [REDACTED] National Representative of the GARBC, states that the beneficiary's "duties are traditionally religious in nature." [REDACTED], Southern California Representative

of the GARBC, states: "The duties of being a Music Minister and Children Minister are traditionally religious in nature and vital to the overall ministry of the churches in our denomination."

With respect to the beneficiary's education, the record shows that while the beneficiary did not apparently take any individual courses that were both religious and musical in nature, she did take religious and musical courses at Santa Clara College, often during the same semester. Because the beneficiary was studying at Santa Clara's Baptist Bible Seminary and Institute, it is highly likely that there was at least an implicitly religious context to her music courses.

Not every person who performs music during a church service will necessarily qualify for immigration benefits as a special immigrant religious worker. Certainly the members of an all-volunteer church choir, drawn from the ranks of the congregation, would not so qualify. Similarly, an alien who supported himself or herself primarily through secular employment, but devoted a few hours of each week to rehearsing and playing the piano or organ during Sunday services, would not be engaged in a religious occupation. Here, however, the beneficiary has shown a level of commitment considerably beyond this minimal level of involvement, and even then, the beneficiary's duties are not exclusively musical.

Once the director indicated that statements from denominational officials would be required, the petitioner provided such statements. The director's decision rests on the petitioner's failure to provide evidence that had never previously been requested, the fact that the articles of incorporation did not meet a purpose for which it was never intended, and on an incomplete reading of the beneficiary's educational credentials. These bases for denial cannot withstand appellate scrutiny, and the petitioner, on appeal, has essentially remedied the perceived deficiencies in the record.

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 met that burden and overcome the sole stated basis for denial. Accordingly, in the absence of other articulated grounds for denial, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.