



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 23 2001

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)

IN BEHALF OF APPLICANT



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of 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), in order to employ her as an accompanist to its choir.

The director denied the petition determining, in pertinent part, that the petitioner failed to establish that the beneficiary had at least two years of experience continuously engaged in a religious occupation. The director further found that the petitioner had not established that the position of accompanist is qualifying as a religious occupation.

On appeal, the petitioner submitted a written statement affirming its claim that the beneficiary has been a member of the congregation and its accompanist since 1995 and submitted a series of cancelled checks made out to the beneficiary.

Section 203(b)(4) of the Act provides classification as a special immigrant religious worker to a qualified alien 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, 2003, 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, 2003, 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 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 petitioner is a church. The petitioner did not provide an estimate of the size of its congregation or state the number of employees, but claimed a projected year 2000 budget of approximately \$319,000. The beneficiary is a native and citizen of Korea who was last admitted to the United States on December 26, 1991, as the F-2 dependent of a student. Her current immigration status is unknown.

The first issue raised by the director is whether the beneficiary satisfied the requirement of having had two years of experience in a religious occupation.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of 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.

The petition was filed on December 9, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious occupation for at least the two years since December 9, 1997.

The petitioner has stated that the beneficiary served as an accompanist since 1995 and submitted a series of checks made out to the beneficiary in varying amounts dated in 1997, 1998, and 1999. The petitioner also submitted a document titled "Temporary Elders Meeting" dated May 7, 1995 which states that the beneficiary "has served our church from May with monthly honorarium of \$500." Other documentation submitted to the record indicates that the beneficiary has pursued university degrees in music in the United States and has been self-employed as a professional musician and composer.

On review, it must be concluded that the petitioner failed to overcome the director's objection. At issue is the length and terms of the beneficiary's alleged employment by the church. The petitioner has not provided a clear statement of the dates and terms of its employment of the beneficiary and has not provided corroborating documentation such as her tax returns. The petitioner's statement that the beneficiary was employed by the church as its accompanist for its Sunday and Friday worship

services is insufficient to satisfy the statutory requirement. Part-time intermittent employment of an individual, who is also engaged in secular employment, does not establish that the alien was "continuously carrying on a religious occupation" as required.

The petitioner did not provide a comprehensive description of the beneficiary's employment history in the United States, including her secular employment as a musician. Absent a comprehensive description of the beneficiary's employment history, supported by corroborating documentation, the Service is unable to determine that the beneficiary was engaged in any particular occupation during the two-year qualifying period.

It must also be determined whether the past and proposed duties of the position of "accompanist" constitute a religious occupation for the purposes of this proceeding.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means 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.

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 complete prescribed courses of training established by the governing body of the denomination and their services are 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. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service 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 specific prescribed religious training or theological education is required, 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.

Music is a component of the worship services of many religious denominations. However, the performance of music for a religious organization is not considered a qualifying religious occupation for the purpose of special immigrant classification. A musical background, rather than a theological one, is the only prerequisite for the position. There is no inherent requirement that a person employed as a church accompanist, such as an organist or pianist, be a member of the employer's denomination or that he or she participate in the worship services, beyond providing the musical accompaniment. The petitioner's assertion that music is an integral part of its worship services is recognized. The duties of the position, however, are not necessarily dependent on any religious background or prescribed theological education. Nor is the performance of the duty directly related to the creed of the denomination. Accordingly, it must be concluded that the petitioner has failed to establish that the position of accompanist constitutes a qualifying religious occupation within the meaning of section 101(a)(27)(C) of the Act.

Beyond the discussion in the director's decision, the petition is deficient on additional grounds. The petitioner failed to submit the necessary documentation to establish that it is a qualifying organization exempt from, or eligible for exemption from, taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. The petitioner also failed to submit the required evidence of its ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.