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U.S. Department of Justice

Immigration and Naturalization Service

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



File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date: MAY 16 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



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
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 him as a church organist, music director, and outreach musical minister.

The director denied the petition determining, in pertinent part, that the beneficiary's claimed experience as a part-time volunteer church organist did not satisfy the requirement of having 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 proposed position constituted a qualifying religious occupation.

On appeal, counsel for the petitioner submitted a written brief arguing that the director ignored evidence that the beneficiary had been paid by another church as an organist. Counsel further objected to the director's statement that the petitioner had not demonstrated a need for the position and submitted published documents discussing the shortage of church organists.

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 claiming a membership of 224. The beneficiary is described as a native and citizen of Cyprus who last entered the United States on January 18, 1992, as an F-1 student. The beneficiary's current immigration status is unknown. It was stated that the beneficiary earned a Bachelor's degree in music from Case Western Reserve University on an unstated date.

The first issue raised by the director is whether the beneficiary's past activities as a church organist 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 January 25, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious occupation for at least the two years from January 25, 1997 through the date of filing.

In support of the petition, the pastor of the church testified in a letter dated December 28, 1998, that the beneficiary had been a member of the church since July 1994 and had served as an organist since September 1997. In response to a written request from the director, the petitioner submitted a letter from Rev. [REDACTED] of the Mt. Olive Lutheran Church stating that the beneficiary served as its organist from July 1994 to August 1997. The petitioner also submitted four W-2 Wage and Tax Statements reflecting wages paid from Mt. Olive Lutheran to the beneficiary as follows: 1994 - \$1,470; 1995 - \$2,835; 1996 - \$3,018; and 1997 - \$2,130.

On appeal, counsel argued that the regulations and that two past appellate decisions did not require that the prior experience have been full-time and that "the Service should be willing to recognize the dedicated two years of service as fulfilling the prerequisite as stated in the regulation."

The statute requires that the alien have been "carrying on such vocation, professional work, or other work continuously" for the two years prior to filing. See Section 101(a)(27)(C)(iii) of the Act. The regulations are silent on the question of part-time or volunteer work satisfying the requirement. This is in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The regulation defines religious occupations, in contrast, in general terms as an activity related to a traditional religious function. Id. The regulations therefore recognize a distinction between someone practicing a life-long religious calling and a lay employee engaged in an occupation.

In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show the terms of remuneration and clearly show that the alien will not be dependent on supplemental employment. See 8 C.F.R. 204.5(m)(4). This is consistent with the plain meaning of the term "occupation" which is an activity engaged in as one's primary activity and means of support. The Service therefore holds that a position underlying a petition for special immigrant classification, in the case of lay workers engaged in an occupation, to require full-time paid employment consistent with other employment-based petitions. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets the regulations to require that the prior experience have been full-time salaried employment as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in an occupation.

In this case, it is claimed that the beneficiary worked an unspecified number of part-time paid hours as an organist from 1994 to 1997 for the Mt. Olive Lutheran Church and an unspecified number of part-time unpaid hours from September 1997 through the date of filing as organist for the petitioning church. It must be concluded that this does not constitute at least two years of continuous experience in a religious occupation within the meaning of section 101(a)(27)(C) of the Act. Therefore, the petitioner has failed to overcome the director's objection.

Counsel also referred to two unpublished administrative decisions of this Service regarding appeals of special immigrant religious worker cases to support the instant appeal. While it has not been

shown that the facts of the cases are similar, it must be noted that the unpublished administrative decisions relied on by counsel do not have binding precedential value. See 8 C.F.R. 103.3(c). It must further be noted that the Service is not bound by past decisions which may have been issued in error. See National Labor Relations Bd. v. Seven-up Bottling Co. of Miami, 344 U.S. 344, 349 (1953).

The next issue to be reviewed is whether the proffered position constitutes a religious occupation for the purpose 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 regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The examples listed reflect 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 religious counselor, catechist, and cantor, 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.

In this case, the duties of the position were described as having three separate components. As organist, the beneficiary would perform at the two regular Sunday services of the church and at any special or holiday services. As music director, the beneficiary would select the hymns for the two services and play for choir rehearsals. As outreach minister, the beneficiary would provide organ and piano lessons to members of the congregation and may be involved in some capacity with the church-sponsored day-care facility. The petitioner asserted that these duties combined would constitute a full-time salaried position.

First, the duties of playing the organ at worship services and choir rehearsals have not been shown to be qualifying. 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 an organist 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 has not establish that the position is regulated by the governing body of the denomination or that it requires specific prescribed religious training.

Second, the duties of providing music lessons to fellow members of the congregation and working in a day-care facility are essentially secular functions. The petitioner's stated desire that these functions be carried out in a "Christian manner" is acknowledged, but cannot be considered to constitute the duties of a qualifying religious occupation. Accordingly, the duties of the proffered position described by the petitioner cannot be considered to be a qualifying religious occupation within the meaning of this provision.

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.