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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



2 JUL 2002

File: [Redacted] Office: Nebraska 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)

IN BEHALF OF PETITIONER: [Redacted]

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and 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 minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), in order to employ her as "minister of music and worship" at a salary of \$1,600 per month.

The director denied the petition finding that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification and that the beneficiary's claimed voluntary service with the petitioner was insufficient to satisfy the requirement that she had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submitted a written brief arguing that music plays a major part of the religious worship of the petitioner and that the beneficiary has at least two years of full-time work experience with the petitioner.

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, 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 in this matter is described as a church. It did not provide a description of the size of its congregation or the number of employees. The beneficiary is described as a native and citizen of the Philippines who last entered the United States on March 31, 1996, as a B-2 visitor. The record reflects that the beneficiary remained beyond any period of authorized stay and has resided since such time in an unlawful status. The petitioner failed to disclose on the petition form at the space provided whether the beneficiary has been employed in the United States without authorization.

The record has been reviewed *de novo*. It must first be noted that the petitioner did not provide all required information on the petition form. Absent all required information, the petition cannot be properly adjudicated. The petition may be denied as incomplete solely on this basis. See 8 C.F.R. 103.2(a)(1).

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

A petitioner must establish that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

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(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

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

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

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.

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.

In this case, the petitioner asserts that the position is full time, that it requires two years of experience, and that music is a major part of its worship practices. The duties of the position were described as leading the church choir and preparing the music for worship services.

After a review of the record, it is concluded that the petitioner has not established that the position of "minister of music and worship" constitutes a qualifying religious occupation.

First, the petitioner submitted no documentation that the position is a traditional full-time paid occupation in its denomination. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner asserted that music is integral to its worship practices, but did not provide verification from an authorized official of the denomination that permanent salaried employment in such an occupation is a traditional function within the denomination. To establish that a position is qualifying as a religious occupation, that an alien is qualified in the position, and has been carrying on such a position, acceptable evidence includes a letter from a Superior or Principal of the denomination in the United States. See Matter of Varughese, 17 I&N

Dec. 399 (BIA 1980).

Second, the petitioner failed to state the size of its congregation, the number of its employees, the size of its choir, or the number of worship services per week. Absent such information, the Service is unable to conclude that the position could reasonably be a full-time occupation with the petitioner. It is noted that while the petitioner asserted that the beneficiary's prior experience and proposed employment would be full time, the actual description of duties calculated only to an average of 14 - 15 hours per week.

Third, the petitioner gave no indication that it has ever employed a person in this capacity in the past and gave no explanation of its decision to do so at this time. Furthermore, there is no indication that the position was advertised or that other candidates were considered. The petitioner stated that the position would become full time and permanent, only upon approval of permanent resident status for the beneficiary. This set of facts is insufficient to establish that the proposed position is a traditional religious occupation of the petitioning church. A petitioner must credibly establish its intent to employ the alien beneficiary in the capacity specified in the petition. Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966). Here, the petitioner has not adequately established its intention.

Finally, in reaching a determination on whether a position constitutes a religious occupation for the purpose of special immigrant classification, the Service must distinguish between common participation in the religious life of a denomination and engaging in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. Such voluntary positions filled by members of a congregation are not considered religious occupations. The Service interprets its own regulations to hold that religious occupations are full-time paid positions requiring specific religious training. While participation with the church choir is a tradition in many denominations, there is no evidence that the instant position is a traditional full-time paid position with the prospective employer or its denomination at large. Therefore, it must be concluded that the petitioner has failed to establish that the proposed position constitutes a qualifying religious occupation.

The petitioner must establish that the beneficiary had had the requisite two years of continuous 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 September 29, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least September 29, 1998.

In this case, the petitioner asserted that the beneficiary joined the church in April 1998, commenced volunteering as minister of music and worship at an unspecified date, and commenced receiving a cash "stipend" for her service at an unspecified date.

As noted by the director, the Service interprets its own regulations to require that the prior experience in a lay religious occupation to have been full time and salaried. As discussed above, while the petitioner asserted that the experience was full time, it failed to provide an adequate description of its operations to substantiate that claim. Nor is there any evidence that it was a salaried position since at least September 1998. The petitioner submitted copies of Form W-2 wage statements issued to the beneficiary by the church indicating payments of \$5,337 in 1999 and \$6,500 in 2000. No tax documents were submitted for 1998, and the amounts in the 1999 and 2000 W-2s do not reflect full-time continuous employment. This evidence is not sufficient to establish that the alien was continuously engaged in a religious occupation with the petitioner for at least two years.

In addition, the petitioner failed to provide a detailed description of the beneficiary's employment or means of financial support. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as tax documents, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation during the two-year qualifying period.

Finally, in evaluating a claim of prior work experience, the Service must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same

responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. For all these reasons, the Service holds that lay persons who participate in church activities or donate voluntary services to their church, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

A petitioner also must demonstrate its ability to pay the proffered wage.

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

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 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 annual reports, federal tax returns, or audited financial statements.

The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements that are current as of the date of filing the petition. Therefore, the petitioner has not satisfied the documentary requirement. For this reason as well, the petition may not be approved.

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

ORDER: The appeal is dismissed.