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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 MASS, 3/F  
Washington, D.C. 20536

File: Office: VERMONT SERVICE CENTER

Date: JUL 10 2003

IN RE: Petitioner:   
Beneficiary:

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:

**INSTRUCTIONS:**

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. An appeal was dismissed by the Administrative Appeals Office (AAO). A subsequent motion to reopen was dismissed by the AAO. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted; the initial decision of the director will be withdrawn, and the visa petition will be approved.

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 a choral conductor.

The director denied the petition, finding that the evidence was insufficient to establish that the beneficiary had been continuously carrying on a religious occupation on a full-time basis for at least the two years preceding the filing of the petition.

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 a church affiliated with the Roman Catholic denomination. The petitioner submitted evidence that it has the appropriate tax exempt recognition. The beneficiary was the recipient of an approved special immigrant religious worker visa in 1998.

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

At issue in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

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 February 8, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least February 8, 1998.

The petitioner submitted the beneficiary's work schedule and copies of the beneficiary's income tax returns and Forms 1099 for the years 1998 and 1999.

The director concluded that the variance in the beneficiary's pay and the petitioner's description of the beneficiary's workweek was brief and unclear as to the number of hours worked and whether the job is full-time.

On motion, the petitioner provided an explanation as to why the beneficiary's income fell from \$11,370 in 1998 to \$9,600 in 1999. The petitioner explained that the beneficiary took a two-month leave of absence without pay to accompany her minor child to a music school. The petitioner provided the Bureau with corroborating evidence.

In review, the petitioner provided sufficient detail as to the beneficiary's work schedule to establish that she is employed on a full-time basis.

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 sustained that burden.

**ORDER:** The appeal is sustained.

APR 12 2003