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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 MASS, 3/F

Washington, D.C. 20536

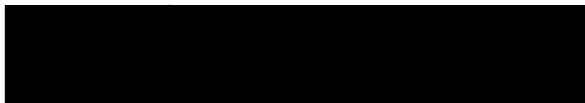


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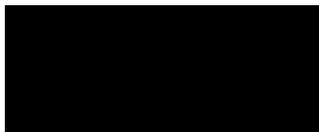
Date: **NOV 14 2003**

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.

Cindy N. Gomez
for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the Vermont Service Center and is now before the Administrative Appeals Office (AAO) 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"), in order to employ him as its religious music director.

The director denied the petition finding that the petitioner had failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification and that the beneficiary had been continuously carrying on a religious occupation during the two-year period immediately preceding the filing date of the petition.

On appeal, counsel submits a brief and additional documentation.

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 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).

Pursuant to 8 C.F.R. § 204.5(m)(3), 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.

* * *

(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.

Pursuant to 8 C.F.R. § 204.5(m)(2), the term "religious occupation" is defined as follows:

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 as to 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," but instead provides a brief list of examples. A review of 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. The non-qualifying positions are those that are primarily administrative or secular in nature, such as janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The Bureau interprets the term "traditional religious function" to require a demonstration that the duties of the position are

directly related to the religious creed or beliefs 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 or the petitioning religious organization.

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

First, the petitioner has not shown that the duties of the position directly relate to the creed of the denomination.

Second, the petitioner has not shown that the position of religious music director is defined and recognized by the governing body of the denomination.

Third, the petitioning church has not shown that the position is a traditional full-time paid occupation in the denomination such as a letter from an authorized official of the denomination. Further, although the petitioning church's by-laws define the requirements for the position of religious music director, there is no indication in the by-laws that the position is traditionally a full-time salaried position within the petitioning church. The petitioning church has not provided any evidence that it has previously employed full-time salaried religious music directors. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On appeal, counsel asserts that other churches in the United Methodist denomination acknowledge the position of religious music director as a full-time religious function. In support of his statement, counsel submits copies of two approval notices for religious worker petitions filed by United Methodist churches and the letters submitted with those petitions. It is noted the record contains no evidence that the petitioning church is affiliated with the United Methodist Church. In fact, the petitioning church is affiliated with the Reformed Church in America. The standards set forth by the United Methodist Church for music director positions have no relevance to the requirements of the petitioning church's denomination. As previously stated, the petitioning church has not provided a letter from an official of the denomination stating that the offered position is traditionally a full-time salaried position within the denomination. In view of the foregoing, it is concluded the petitioner has not established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

The second issue to be addressed in this proceeding is whether the petitioner has shown that the beneficiary had been continuously

serving as a full-time salaried religious music director during the two-year period immediately preceding the filing date of the petition.

On appeal, counsel states that the beneficiary was continuously employed by the petitioning church as a full-time salaried religious music director during the two-year period immediately preceding the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(m) (1):

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 legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at Section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule a (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. [*Matter of B*, 3 I&N Dec. 162 (CO 1948)].

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a fulltime student who was devoting only nine hours a week to religious duties. [*Matter of Varughese*, 17 I&N Dec. 399 (BIA, 1980)].

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment [*Matter of Bisulca*, 10 I&N Dec. 612 (Reg Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg Com 1963)].

In line with these past decisions and the intent of Congress, it

is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To find otherwise would be outside the intent of Congress.

In this case, the petition was filed on August 15, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least August 15, 1999.

The record shows that the beneficiary was awarded a Bachelor's of Music degree by Chung-Ang University in Korea on February 21, 1986. The petitioner has not provided any information regarding the beneficiary's employment from 1986 through 1992. From 1992 to 1994 the beneficiary served Hosanna Church in Korea as choir conductor. On January 7, 1995, the beneficiary was admitted to the United States as a nonimmigrant F-1 student with authorization to remain in the United States for the duration of his studies. He graduated from Brooklyn College, City University of New York, with a Master of Performance in Music degree on June 1, 1998. He was authorized one year of practical training from July 1, 1998 to July 1, 1999. On June 15, 1999, the beneficiary was granted change of nonimmigrant status from F-1 student to R-1 religious worker in order to serve as music director for the petitioning church. The beneficiary was still serving the petitioning church in that capacity as of the filing date of the petition.

The director found the initial evidence submitted in support of the petition insufficient to establish eligibility for the benefit sought and requested that the petitioner provide additional information regarding the beneficiary's duties and the hours spent on each duty per week. In response to the director's request, the petitioner's reverend stated that the church has experienced rapid growth and now has two choirs, a day service choir and a night service choir. The petitioner's reverend provided the following listing of the church's weekly services:

Sunday Day Service:	11:00 AM - 1:00 PM
Sunday English Service:	1:00 PM - 3:00 PM
Sunday Night Service:	7:00 PM - 9:00 PM
Friday Prayer Meeting:	8:30 PM - 10:30 PM

The petitioner described the beneficiary's weekly choir rehearsal schedule as follows:

Monday:	6:00 PM - 9:00 PM (With Day Service Choir)
Tuesday:	6:00 PM - 9:00 PM (With Night Service Choir)
Wednesday:	6:00 PM - 9:00 PM (With Day Service Choir)
Thursday:	6:00 PM - 9:00 PM (With Night Service Choir)
Friday:	6:00 PM - 9:00 PM (With both Choir teams)

The director noted that these duties total only 23 hours per week, an insufficient number of hours to qualify as full-time employment. On appeal, the petitioner's reverend states that the director failed to take into consideration the beneficiary's other duties, which include preparing and revising musical scores, preparing for special religious occasions such as Easter and Christmas services, weddings, funerals, and Bible meetings, and serving as a conductor for inter-church religious music concerts. The petitioner's reverend submits musical scores that have been annotated by the beneficiary and rehearsal schedules for Christmas and Easter performances conducted by the beneficiary. The rehearsal schedules submitted show that preparation and rehearsal for such concerts typically begin approximately three months before the performance. The petitioner's reverend has not submitted evidence to show that the beneficiary spends an average of five hours per week throughout the year preparing for such occasions. Additionally, the petitioner has not submitted any evidence to show that the beneficiary spends five hours per week preparing for special occasion concerts or participating in inter-church concerts. Furthermore, while the annotated scores submitted by the petitioner show that the beneficiary spends some time scoring music for choir performances, the petitioner's reverend has not provided any evidence that the beneficiary typically spends ten hours per week engaged in this activity. Upon review of the record, it is concluded the petitioner has not shown that the beneficiary's duties require sufficient time each week to constitute full-time employment of at least 35 to 40 hours per week.

Furthermore, it is noted that the listing of the beneficiary's duties provided in response to the Bureau request for additional evidence contradicts the original description of the beneficiary's duties. The petitioner's reverend initially indicated the beneficiary would be conducting only one service per week on Sunday from 11:00 AM to 1:00 PM, not three services on Sunday and one on Friday evening as the petitioner now claims. Additionally, the petitioner's reverend did not indicate in the initial listing of the beneficiary's duties that the beneficiary must rehearse with two choirs each week in preparation for church services. The petitioner's reverend has not provided any explanation for these discrepancies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the immigrant visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such

inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In reviewing an immigrant visa petition, the AAO must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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.