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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: NOV 19 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: [REDACTED]

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 Citizenship and Immigration Services (CIS) 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, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner 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 her as a church accompanist at a monthly salary of \$1,200.

The director denied the petition, finding that the petitioner had failed to establish that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

On appeal, counsel for the petitioner submits a brief and additional documentation. Counsel asserts that the petitioner has established that the position offered is a qualifying religious occupation and that CIS is incorrect to request information that counsel claims is irrelevant to 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, 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).

The petitioner is a Presbyterian church. Documentation submitted in support of the petition indicates that it has a congregation consisting of 40 families and one salaried employee, Pastor [REDACTED]

The beneficiary is a native and citizen of Korea who was adopted by Pastor [REDACTED] and his spouse on March 31, 1994. On April 27, 1994, the beneficiary entered the United States as a nonimmigrant visitor for pleasure (B-2). Her current immigration status is not noted in the record. The petitioner indicates on the Form I-360 petition that the beneficiary has not been employed in the United States without authorization.

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

At issue in this proceeding is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

The regulation at 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.

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 the regulations. 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.

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

¹ A list of the petitioner's membership, with names of members written in Korean and addresses and phone numbers in English, indicates that the church's membership is comprised of 40 separate families. An unaudited financial statement submitted by counsel on appeal indicates that the petitioner had one salaried pastoral employee in 2001.

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.

In this case, the petitioner asserts that the position is full-time and requires a high school education and two years of experience. In a letter dated August 8, 2002, Pastor Choi describes the duties of the position as follows:

[The beneficiary's] responsibilities and duties are playing piano at the worship services (15 hrs), rehearse with choir for the worship (5 hrs), design, organize, plans [sic] church music education of the choirs and Church members (5 hrs). Provide new praise songs for choir and instrumental groups (8 hrs). Participate in music seminar, special music concert and the monthly praise worship (7 hrs).

On appeal, counsel cites a decision of a federal district court in Illinois, as holding that the position of "music director" qualifies as a religious occupation. Counsel's assertion is not supported by the record as counsel has not provided a complete copy of the court's decision. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, the facts of the instant petition cannot be considered directly relevant to the decision in the Illinois case. Each petition and supporting evidence must be reviewed in its entirety and cannot be found approvable merely because the title of the position is the same as the one found in the federal district court case.

Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decisions of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, however the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, decisions of district courts are not binding on the AAO outside of the particular jurisdiction.

On appeal, counsel also asserts CIS is incorrect to request information regarding the petitioner's recruiting practices or whether it has ever employed a person as a church accompanist in the past. CIS rejects this argument. Determining the status or the duties of an individual within a religious organization is not a matter under CIS's purview; determining whether that individual qualifies for status or benefits under our immigration laws is

another. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). To make these determinations, CIS often requests additional evidence pertinent to the context of the decision to be made. The director's request for additional evidence appears germane and on point.

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

The record contains no documentary evidence from an official of the Presbyterian denomination stating that the position is defined and recognized by the governing body of the denomination, and that it is traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning religious organization.

The only letters contained in the record that can be considered to be from a Presbyterian official are letters from Pastor Choi, the beneficiary's adoptive father. Pastor Choi states that the position requires merely a high school education and two years of experience. He does not verify that permanent salaried employment in such an occupation is a traditional function within the denomination. Further, there is no evidence contained in the record, in the form of pay records or other financial verification, that the petitioner has ever employed other individuals in this capacity in the past. There is also no indication that the position was advertised or that other candidates were considered.

Based on the record as constituted, the petitioner has not established that the position of church accompanist qualifies as a religious occupation. Therefore, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that: (1) it has had the ability to pay the beneficiary the proffered wage since the filing date of the petition; (2) the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition; and, (3) the beneficiary is qualified to engage in a religious vocation or occupation. Since the appeal will be dismissed for the reason discussed, these issues need not be examined further in this proceeding.

In reviewing an immigrant visa petition, CIS 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 met that burden.

ORDER: The appeal is dismissed.