

C1

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

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



File:

Office: VERMONT SERVICE CENTER

Date: OCT 8 - 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:



PUBLIC COPY

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 M. 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 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 "religious vocalist."

The director determined that the petitioner had failed to establish that the offered position is a qualifying religious occupation.

On appeal, counsel indicated on September 5, 2002, that a brief would be submitted within 30 days of the filing date of the petition. To date, no additional information has been provided. Therefore, the record must be considered complete.

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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue Code of 1986 at the request of the organization. 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.

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

The issue to be addressed in this proceeding is whether the petitioner has established that the offered position is a qualifying religious occupation.

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 Act at section 203(b)(4), 8 U.S.C. § 1101(a)(27)(C). 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. The regulation does not define the term "traditional religious function," but instead provides a brief list of examples. 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. Persons in qualifying religious occupations must complete prescribed courses of training established by the governing body of the denomination, and their services must be 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. Religious knowledge gained as a matter of course as a result of membership in the religious denomination does not constitute training for a religious occupation.

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 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.

The petitioner described the duties of the position as follows:

[The beneficiary's] duties include singing with the Liberian A-Cappella Choir as tenor singer, speaking to various groups in the United States on behalf of the [petitioner] (which includes sharing information on the various ministries, in particular the children [sic] ministries, that [the petitioner] does in Liberia), and sharing historical and cultural information on Liberia [with] those groups. In churches and other allowable places, [the beneficiary] shares his testimony, which may include the presentation of the gospel message and an invitation for persons to make a decision for Christ. He is responsible for setting [up] the sound equipment and providing care for the blind boys.

The petitioner states that the beneficiary will be paid \$9,500 per year plus room, board, travel and medical expenses. The petitioner provided a sample schedule for a 38-hour work week, consisting of five hours of rehearsal, eleven hours of performances at schools and churches, five hours of equipment set-up and break-down, and sixteen hours of travel between performance venues.

The director stated that that the position does not require specialized religious training, only the ability to sing. The director, therefore, concluded that the petitioner had not established that the beneficiary will be employed in a religious occupation.

On appeal, counsel states:

You err and discriminate by saying that a Christian Choir Singer is not a religious profession but a Jewish cantor is. Furthermore, you err by claiming that a religious singer only requires the ability to sing. They must have knowledge about religion and religious songs and have a conviction in Christ. Moreover, they sing praises to Christ and perform missionary work in their singing of praises to the King - surely this is more than your understanding. Finally, throughout Christian history, music and singing have played a vital role in the religion.

Counsel has not provided any evidence to show that the beneficiary's duties (including secular duties that involved significant amounts of travel, fund raising, and multiple performances outside of houses of worship) are those of a religious worker. It was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence. While music has long been a part of Christian tradition, the same can be said of many other faiths. The petitioner has not shown that the beneficiary's overall duties constitute traditional religious functions. The beneficiary's occupation, as described by the petitioner, is essentially membership in a touring vocal group. The petitioner has not shown that the petitioner's denomination has traditionally employed full-time, salaried, touring vocal groups.

Counsel contends that the very act of "sing[ing] praises to Christ" constitutes "missionary work." It is common, however, for entire Christian congregations to join in the singing of hymns during Sunday services. Therefore, it cannot be concluded that the act of singing hymns, spirituals, gospel songs, and other songs with religious content automatically constitutes a qualifying religious occupation.

The petitioner has not shown 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 for the position, or that the position is defined and recognized by the governing body of the denomination as that of a religious worker.

Furthermore, 8 C.F.R. § 204.5(m)(2) specifically excludes fund raising from qualifying religious occupations. The petitioner has indicated that a primary purpose of the United States organization is "to raise funds for and channel funds to" the associated organization in Liberia. The petitioner has also highlighted the beneficiary's own fund raising role. In view of the foregoing, it is concluded the petitioner has not shown that the offered position is a qualifying religious occupation.

Beyond the director's decision, the petitioner has not shown that it has the ability to pay the beneficiary the offered wage or that it qualifies as a bona fide nonprofit religious organization. Additionally, the petitioner has not shown that the beneficiary is qualified for the position within the religious organization, or that it had extended a valid job offer to the beneficiary. Finally, the petitioner has not established that the beneficiary had been engaged continuously in a qualifying religious occupation for the two years immediately preceding the filing date of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The

petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.