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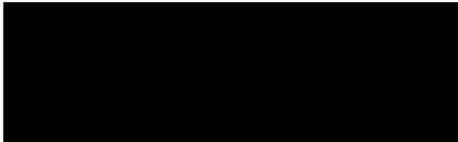


FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUL 20 2004

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, 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 to classify 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), to perform services as a music director. The director determined that the petitioner had not established that the position qualified as that of a religious worker.

On appeal, the petitioner 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).

The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(D) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

The petitioner states that the duties of the proffered position include preparing all worship music, playing the piano for all worship services, presenting musical programs for special occasions, recruiting and training new singers, setting up rehearsal schedules for the choirs, and creating and promoting new music education for the community. The petitioner detailed the beneficiary's workweek in a letter dated April 26, 2001, and states that the beneficiary is expected to work 40 hours per week and will be compensated at a rate of \$10,200 annually.

The director determined that the petitioner had not established that the proffered position qualified as a religious occupation within the meaning of this statutory provision.

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. The regulation does not define the term "traditional religious function" and 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. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services 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. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore 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 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 submitted evidence that it is affiliated with the Christian and Missionary Alliance (CMA) and receives tax-exempt status under that organization's group exemption from the Internal Revenue Service. The petitioner submitted a certification from the CMA, certifying that the beneficiary is a music minister and stating that the "license is valid for the year January 1 through December 31, 2001." The petitioner also submitted a copy of extract from the 1999 edition of the "Manual of the Christian and Missionary Alliance," which addresses the certification requirements of nonclergy church professionals. Included in the list of such personnel is the music director. The evidence indicates that the governing body of the petitioner's denomination recognizes the position.

The evidence does not establish, however, that the position of music director is a traditional full-time, salaried occupation within the petitioning organization or within the denomination. The record reflects that the beneficiary has been associated with at least two other churches within the CMA, serving in part-time uncompensated positions as music teacher or music director. Although the churches did not compensate the beneficiary, one church collected a special offering for his services. The record contains no evidence of guidance from the CMA that specifically defines the requirements of a music director within the denomination. Further, according to the petitioner, the beneficiary began serving with it as full-time music director only two months before the petition was filed. No evidence was submitted regarding the music director position prior to the beneficiary assuming the position. The evidence is insufficient to establish that the position of music director is traditionally a full time, salaried position within the petitioner's denomination or within the petitioning congregation.

Beyond the decision of the director, the petitioner has not established that the beneficiary possessed the required two years membership in the denomination. This deficiency constitutes another ground for dismissal of the appeal.

The record reflects that a petition was filed on behalf of the beneficiary in 1998. The Director, Vermont Service Center denied the petition on June 1, 1999. The appeal by the petitioning church in July 1999 was subsequently dismissed by the AAO on July 26, 2000. In that petition, evidence was submitted indicating that the petitioner, Holyrood Church, was an affiliate of the Protestant Episcopal Church and that the beneficiary had been a member of the petitioning organization since 1992. Documentation submitted in support of the appeal indicated that the beneficiary was still a member of Holyrood Church in July 1999.

The current petitioner indicates that the beneficiary became a member of its organization in January 1999. In a letter dated May 4, 2002, the petitioner's pastor, Reverend Felicié, stated that the beneficiary has been a music teacher at the petitioner's "Music Academy" since 1998. In another letter dated January 10, 2003, Reverend Felicié states that the beneficiary received "advanced religious training in this Church from December 1998 to December 2000."

The evidence submitted by the petitioner does not reflect an affiliation between the petitioning church and the previous petitioner. The overlapping dates and inconsistencies in the record raise questions as to the validity of the evidence submitted. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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.