



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: OCT 07 2007

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION: Immigrant 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 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

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petitioner filed an untimely appeal to this decision, which the director treated as a motion to reopen pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The director reopened the petition and again denied it. The matter is now before the Administrative Appeals Office 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 worship and music director. The director determined that the petitioner had not established that the position qualifies as a religious occupation, or that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date 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 Revenue 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 first issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

*Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

*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.

*Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

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 at 8 C.F.R. § 204.5(m)(2) 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.

Citizenship and Immigration Services 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.

Three church officials, in a joint letter, state that the beneficiary "has been involved in the church life in translating; teaching; signing; training; leading adult and youth choirs; assisting the Pastor as director in ministry; and organizing, implementing, and evaluating the choir activity and music programs." The petitioner offers a more detailed description, stating that the worship music director:

1. Works together with the Senior Pastor in planning and leading Sunday morning worship services.
2. Recruits, trains, and leads the adult choir for the purpose of Sunday morning ministry, as well as regular concerts and other opportunities for equipping and evangelism (includes the review, selection, and ordering of music).
3. Recruits, trains, and leads an adult praise team for the purpose of Sunday morning ministry, as well as regular concerts and other opportunities for equipping and evangelism (includes the review, selection, and ordering of music).
4. Oversees recruitment, training, and supportive fellowship of worship leaders and facilitators, to include media ministry.
5. Reviews, selects, orders, and teaches new songs of praise and hymns for congregational singing.
6. Works together with other ministry leaders to incorporate music into the ministries.
7. Recruits, trains, and develops additional choirs, ensembles, orchestra, and vocalists.
8. Assists the Senior Pastor, as directed, in ministry deemed necessary for the good of the overall ministry of the [petitioning church].
9. Oversees the planning and implementation of a worship/music budget.

The director requested additional evidence to show not only details about the beneficiary's duties, but also that the beneficiary's work relates to a traditional religious function. In response, the petitioner has submitted documents from church authorities, attesting to the beneficiary's religious education and her past efforts on behalf of the denomination. These materials did not address the question of whether the beneficiary's work is

recognized as relating to a traditional religious function within that denomination, or that churches within the denomination routinely employ paid, full-time workers to perform those tasks.

The director denied the petition on October 2, 2003. The director treated the petitioner's appeal, filed on November 6, 2003, as a motion to reopen. In that submission, the petitioner has submitted copies of previously submitted documents, and counsel has argued that these documents show that the denomination recognizes the beneficiary's position as a religious occupation. Counsel does not explain this contention, as the documents only show that the denomination is aware of the petitioner's intent to employ the beneficiary.

Counsel states "[t]he Government should not interfere in the matters of the church and dictate that the Worship and Music Director vocation does not fall within the call and meaning of a religious vocation" (sic). While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. 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). The BIA noted, in *Matter of Rhee*, that if the issue of eligibility for immigration benefits was left in the hands of churches, then "Congressional policy in the field of immigration could be readily circumvented by accommodating religious organizations." *Id.* at 610.

The director again denied the petition on December 19, 2003, stating that the petitioner had failed to overcome the grounds stated in the first denial notice. On appeal, counsel argues that the beneficiary engages in a religious vocation, because she "has demonstrated a lifelong commitment to the Religious vocation of Director of Worship and Music. This is the equivalent of taking a vow." A lifelong commitment, in the form of a vow, is more than simply an intention or inclination toward religious service. The record contains no evidence of any official, church-recognized, formal commitment by the beneficiary to the church. Joining a religious order typically involves a prolonged period of reflection and formation, above and beyond academic education and church attendance. Here, there is no evidence that the beneficiary has undertaken such formation, or that the petitioning denomination recognizes directors of worship and music as practicing a vocation.

Having argued that the beneficiary practices a religious vocation, counsel then maintains that the beneficiary's position also amounts to a religious occupation. (Counsel at times appears to use the terms "occupation" and "vocation" interchangeably, although the two terms are quite different for immigration purposes.) Counsel repeats elements of the job description reproduced above. The fact that the position has religious elements is not proof that it qualifies as a religious occupation for the purpose of this petition. An individual, employed in a secular job, who volunteers for one hour a week as a Sunday school teacher is performing a religious function, but that does not mean that she is engaged in a religious occupation. The same could be said about a fourteen-year-old altar boy at a Catholic church – his duties are religious, but not an occupation. The petitioner must establish not only the religious nature of the work, but also that such work is traditionally considered employment by the denomination, rather than simply viewed as an activity for which volunteers are recruited from the congregation.

Counsel again asks the rhetorical question "[w]hy is the Government in a better position than the Church in determining and defining what a traditional religious vocation [sic] is?" The core issue here is whether the alien qualifies for an immigration benefit from the government, and, pursuant to *Matter of Rhee*, it is entirely proper that the decision lies with the government, rather than with any church. No church or religious organization has, or should have, the authority simply to declare its adherents eligible for permanent resident

status or other immigration benefits. If benefits are to be available based on religious occupations and vocations, then obviously there must be some operational definitions of those terms, and those definitions must (for equally obvious reasons) be established by the entity granting the benefits, rather than any entity *seeking* those benefits. We reject counsel's argument, which, if carried to its logical conclusion, demands that the government abdicate most of its discretion to the churches and other religious organizations.

The remaining issue concerns the beneficiary's past experience. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate 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. The petition was filed on June 14, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a worship and music director throughout the two years immediately prior to that date. The beneficiary entered the United States on July 21, 2001, and thus spent most of the qualifying period outside the United States.

In a joint letter, three church officials state that the beneficiary "has done volunteer work since July of 2001 at the [petitioning church]." In another joint letter, two officials of Emanuel Christian Baptist Church in Dej, Romania, state "in June of 1999, [the beneficiary] became totally and fully devoted to her work in our Church . . . until her departure to the United States [on] July 21, 2001." Neither of these letters indicate that the beneficiary was ever a paid, full-time church employee.

The director instructed the petitioner to submit evidence that the beneficiary "has been performing the religious work continuously, full-time, and was compensated for the work" during the qualifying period (director's emphasis). In response, the petitioner has submitted a letter from Rev. Cornel Veres, president of the Baptist Cluj Association, who states that the beneficiary "served in Emanuel Christian Baptist Church as Worship Director and Leader of the Music Department from the year 1995 to July 2001." Like the earlier letters, this letter fails to indicate that the beneficiary was a full-time, paid church employee, rather than a dedicated but unpaid, part-time volunteer from the congregation.

Valentin Cosman, treasurer of the petitioning church, states that the beneficiary's position "is a FULL TIME JOB." He discusses the beneficiary's past work at the church:

[T]he church board . . . [decided on] August 12, 2001 . . . that [the beneficiary] will begin a three-month trial period of service with the church.

On this date, November 18, 2001, and pursuant to the above trial period, the Church Board requested that [the beneficiary] begin a second period of voluntary service, until this date of February 17, 2002. On this date, (February 17, 2002) at the general business meeting of the church, the Board recommended that [the beneficiary] be called to full-time service (with employment status) in the position of "Director of Worship and Music" with the [petitioning church].

The above letter is not clear as to whether the beneficiary had worked full-time prior to February 17, 2002. The letter seems to imply otherwise, by indicating that the beneficiary was "called to full-time service" on that date. If the beneficiary was already working full-time for the petitioner, then a "call to full-time service" would have little effect.

states "for the duration of the approval process and until [the beneficiary's] resident status is clarified, we . . . will provide room and board and cash on an as needed basis for [the beneficiary]." Mr. does not clearly state that the petitioner has already been providing these considerations. The assertion that they "will" provide them, without an accompanying assertion that they "are" providing them, suggests that this is a future arrangement. The record contains no evidence to establish that the petitioner provided room, board, or cash to the beneficiary during the qualifying period.

The director's initial decision of October 2, 2003 cited the petitioner's failure to establish the beneficiary's continuous religious work. In response, counsel asserts "[t]he legal standard as enumerated in the regulations at 8 C.F.R. § 204.5(m)(1) is 'continuous' employment not 'paid' employment." Leaving aside the issue of how uncompensated work could constitute "employment" at all, we note prior case law regarding the term "continuous" as it relates to religious workers. In *Matter of B*, 3 I&N Dec. 162 (CO 1948), the term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. The Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). If the beneficiary works exclusively for the church, with no compensation at all, such a situation is not economically tenable for a significant period of time. If the beneficiary earns income from some other occupation, her religious work is not "continuous" as defined by *Matter of B*.

Counsel asserts that the director's position means that "all religious workers that have taken a vow of poverty cannot be considered employees." Counsel will later expand upon this argument, going so far as to claim that this beneficiary *has taken* a vow of poverty. This will be discussed further below, in the context of the latest appeal.

The director, in reaffirming the earlier denial, stated that the petitioner has not established that the beneficiary received any remuneration during the qualifying period.

On appeal, counsel observes that the beneficiary, during her past work, "refrained from the accumulation of wealth." Counsel then states that this "is the equivalent of taking a vow," and that "remuneration for her services as a Minister would conflict with the vow of poverty adopted by" the beneficiary. This comparison is baseless; the fact that the beneficiary was not paid for her work does not in any way imply that she took a "vow" not to accept such payment. Counsel fails to discuss even the possibility that the beneficiary was not paid for her work because the church traditionally does not pay its musicians and choir leaders. This latter possibility seems to be at least as likely as counsel's claim that the beneficiary's work amounts to an unspoken "vow."

Furthermore, in a letter submitted with the initial filing, the petitioner had previously stated that the beneficiary "will receive a salary of \$1,250.00 a month, upon approval of" the petition. Thus, the record conclusively and irrefutably proves that the original job offer, as represented to immigration authorities, included a regular salary. We can afford no credence whatsoever to counsel's new contention that "remuneration for her services as a minister would conflict with the [beneficiary's] vow of poverty." Furthermore, there is no evidentiary support at all for the new assertion that the beneficiary has rendered, or will render, "services as a Minister." These discrepancies significantly impair counsel's credibility, and seem to indicate that counsel has altered the claimed terms of employment in response to the grounds for denial.

Leaving aside the petitioner's documented offer of a salary, counsel fails to explain how the beneficiary would support herself if she were to receive absolutely no remuneration for her work. If a 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. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

Returning to the contention that eligibility is a private "Church matter," counsel states "[i]f a religious worker takes a vow of poverty and gives up the pleasures of life by serving the Church, why should the Government stop this?" We have already discussed the absence of evidence that the beneficiary took any such "vow." Furthermore, the purpose of this decision is not to "stop" the beneficiary from serving the church. Even if the record showed that the denomination refuses to allow the beneficiary to serve the church except in the United States (which it does not), the church's position would not create any obligation on the part of the government to grant immigration benefits. (Were such a system in place, the potential for rampant abuse is so obvious as to require no further discussion.) The petitioner has requested a secular government benefit, and a denial of immigration benefits is not, by any reasonable standard, an impermissible encroachment on the beneficiary's right to practice her religion. In short, at issue is not whether the beneficiary can serve her church, but whether she may reside in the United States while doing so. Counsel's argument rests on two false premises: (1) the government is attempting to dictate church policy; and (2) the church has an inherent right to dictate government policy (or rather, the desires of the church and its members supersede government policy).

The two grounds of denial intersect, here, in different ways. The total absence of evidence that the beneficiary has ever, in the past, received payment for her work, reinforces the finding that the beneficiary's work does not appear to be a religious occupation traditionally recognized within the denomination. Also, if the beneficiary's work is not a religious occupation, then past experience in that job cannot constitute qualifying experience. Counsel's attempt to label the beneficiary's work a religious vocation lacks credibility, as it relies on unsupported claims that are flatly contradicted by the record.

Based on the above discussion, we affirm the director's findings.

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.