



U.S. Citizenship
and Immigration
Services

C1



File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: SEP 19 2004

IN RE: Petitioner: [REDACTED]
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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Mari Johnson

for 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, California Service Center, and 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), in order to classify her as a Music Director/Pianist.

The director denied the petition on November 25, 2003, finding that the petitioner failed to establish the beneficiary was employed in the same religious denomination as the petitioner during the two years preceding the filing of the petition. The director further found that the proposed position as a Music Director/Pianist does not constitute a religious occupation as the position is not related to a traditional religious function in the petitioner's denomination.

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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two-year period 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 regulation 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 February 6, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a Music Director/Pianist in the petitioner’s denomination throughout the two years immediately prior to that date. The petition indicates that the beneficiary last entered the United States on September 20, 2002, which means that the beneficiary was outside of the United States for part of the two-year period, and her experience in the United States, therefore, cannot suffice to meet the experience and denominational membership requirements.

The regulation at 8 C.F.R. § 204.5(m)(2) defines a “religious denomination” as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

After the initial filing, the director requested the petitioner to submit evidence to establish a connection between the petitioner and the beneficiary’s prior employer, Hana Presbyterian Church. In response, the petitioner submitted a statement indicating “[t]here is no connection between the two churches.”

In his decision, the director stated:

[T]he religious work performed during the two-year period should be for, or under the auspices of the same religious denomination as the organization that is currently seeking his or her services. Work performed for a different religious denomination during that time period would not be qualifying . . . [t]he petitioner has not established that there is an institutional relationship or common governing body between the organization currently seeking the beneficiary’s services and the institution or institutions where the beneficiary claimed to have obtained prior work experience.

The regulatory definition of “religious denomination” is somewhat flexible. “Some form of ecclesiastical government” is one way to establish membership in a denomination, but this is neither exclusive nor mandatory. Still, the petitioner must establish a sufficient commonality between the different churches to justify a finding that they share a denomination.

On appeal, the petitioner states:

[T]here are not many Baptist churches in Korea because Presbyterian churches are the main stream. Because of this reason, it was difficult for us to find someone from a Baptist church in Korea, so we made contact of Presbyterian Church Organization . . .

Among Korean churches in the United States, the denomination mostly does not matter because there is the limited number of religious workers including the Music Director/Pianist.

The burden is on the petitioner to show that the different congregations belong to one denomination; we are under no obligation to assume a common denomination or prove that the congregations belong to different denominations. In this instance, the petitioner has provided no evidence to establish the connection between the petitioner and the beneficiary's prior employer, and, in fact, has stated that there is no such connection.

Though the director did not make a determination regarding whether the beneficiary had the requisite experience as a Music Director/Pianist we must address that additional issue. As cited above, both the statute and the regulation require that the beneficiary 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 petitioner claims the beneficiary was "employed at the Hana Presbyterian Church from January of 1999 to September of 2002." The petitioner further claims that from "September of 2002 to present," the beneficiary was employed at the petitioning Church.

In support of these claims, the petitioner submits a letter from Pastor Reverend [REDACTED] Church, indicating the beneficiary worked as a Music Director/Pianist from January 15, 1999 until September 15, 2002, for a salary of 500,000 won. However, the petitioner submits no corroborating evidence, such as paystubs or cancelled checks, to validate this claim. 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).

The record also contains a letter from the petitioner, dated January 5, 2003, entitled "Letter of Appointment," which states:

We interviewed [the beneficiary] and decided to hire her as a Music Director, Pianist at our church. She has ability to perform as Music Director, Pianist in worship. We verify that the above person was hired as a temporarily [sic] basis. The employment will be continually base [sic] upon the Permanent Residency.

1. Date of employment: January 5, 2003
2. Salary: \$1500/ a month

This letter further undermines the petitioner's claim that the beneficiary was employed on a full-time basis for the two-year period immediately preceding the filing of the petition. First, the letter states that the beneficiary was hired on a "temporary" basis. Second, the letter indicates the beneficiary's employment began on January 5, 2003, one month prior to the filing of the petition. This statement is inconsistent with the petitioner's initial claim that the beneficiary began her employment with the petitioner in September 2002. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, the petitioner has not submitted any actual evidence that the petitioner compensated the beneficiary as a full-time employee or otherwise. The record contains a document entitled, "Budget" for the

term January 2003 to December 31, 2003, indicating \$18,000 being allocated to the beneficiary in the position of pianist. However, the record also contains a "Financial Report" for the term January 1, 2002 through December 31, 2002, wherein only \$1,500 is allocated to the beneficiary in her position as a pianist.¹ The fact that the beneficiary earned only \$1,500 during 2002 does not demonstrate that she was employed on a full-time basis during the two-year period immediately preceding the filing of the petition. It is noted that the beneficiary is currently within the United States as a B-2 nonimmigrant and is not authorized to engage in any employment under 8 C.F.R. § 274a.12.

Based upon the above discussion, we concur with the determination of the director that the petitioner failed to establish the beneficiary had the required two years of membership in the denomination. We further find the petitioner has failed to establish the beneficiary had been performing work as a Music Director/Pianist for at least the two-year period immediately preceding the filing of the petition.

The remaining issue to be addressed is whether the beneficiary's position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definition:

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, fundraisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position it is offering qualifies as a religious occupation as defined in the regulation. 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 reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

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.

In this case, the petitioner describes the beneficiary's duties to include:

[D]irecting and coordinating activities of choir members. . . lead[ing] choir group during services . . . arrang[ing] the choir program in accordance with the church activities . . . select[ing] and coach[ing] vocals . . . play[ing] piano to demonstrate musical scales, and

¹ Neither document makes reference to the position as being that of a "Music Director."

rhythm . . . conduct[ing] rehearsals; identify[ing] errors and review[ing] work of choir members . . . prepar[ing] instructional program and assembling materials to be presented.

The regulations specify that religious occupations involve activities that relate to traditional religious functions. The nature of the activity performed must embody the tenets of the particular religion and have religious significance. Their service must be directly related to the creed of the denomination.

Upon consideration of the available evidence, we are not persuaded that the petitioner's denomination regards music directors as a traditional religious function, with such directors as being routinely employed full-time at the denomination's churches. In response to the director's finding that there was no evidence the petitioner had ever employed a member in the capacity of a Music Director/Pianist prior to the beneficiary, the petitioner provides the following explanation on appeal:

Though our church [sic] was established in 1995, this church had not been stable until the beginning of 2002. That is the reason why our church has not hired a Music Director/Pianist . . . But now we have our own building and land and we are financially stable and steady. What we want to say is that our church grew up enough to afford a Music Director/Pianist like the beneficiary.

The fact that the petitioner was able to provide services and operate as a church for more than six years without a Music Director/Pianist does not support the argument that the beneficiary's position is a traditional religious function. Such evidence does not establish that its religious denomination typically or traditionally employs and compensates individuals who perform the functions of a musical director/pianist, as opposed to utilizing the services of unpaid volunteers from the congregation.

The petitioner has submitted no documentation to establish that the position of music director is a traditional, permanent salaried position requiring a religious background at its facility or in the denomination at large. As noted early, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

Beyond the decision of the district director we find the petitioner has failed to establish the beneficiary seeks to enter the United States in accordance with Section 101(a)(27)(C)(ii)(I) of the Act for the purpose of pursuing a religious vocation or religious occupation. In a letter submitted by the beneficiary, the beneficiary states that she is "looking forward to getting a permanent resident card" because she wants "to be an elementary school teacher in California." Clearly, the beneficiary does not seek to enter the United States to continue her work as a Music Director/Pianist for the petitioner, but rather to continue her education and seek employment as a teacher. Therefore, for this additional reason, we do not find the petition approvable.

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.