



U.S. Citizenship
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Services

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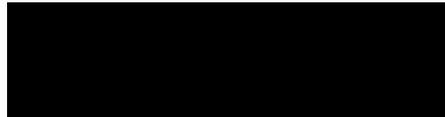
Office: VERMONT SERVICE CENTER

Date: APR 05 2005

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)

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The director reopened the petition on a motion to reopen and again denied the petition. 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 the leader of worship and dance ministry. The director determined that the beneficiary's past and proposed duties did not establish her eligibility for classification.

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 to be determined is whether the beneficiary's proposed duties qualify her for classification as a special immigrant religious worker. Specifically, the issue that must be determined is whether the beneficiary meets the definition of a minister or whether her proffered position qualifies as a religious 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.

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. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The regulation reflects that nonqualifying positions, such as janitors, maintenance workers, and clerks, are those whose duties are primarily administrative or secular in nature.

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.

With regard to the petitioner's description of the beneficiary's *proposed* work, the record does not establish that the beneficiary is coming to the United States to work as a minister or that her position qualifies as a religious occupation.

On appeal, the petitioner submits a copy of a document issued March 5, 2003, indicating the beneficiary is an ordained minister. Counsel, however, states that this document has not been issued to "indicate that [the beneficiary] is now being ordained after the fact, but rather to 'formally recognize' with an identification card, that the beneficiary is considered a Minister." We are not persuaded by counsel's attempt to differentiate between the beneficiary's ordainment after the filing of the petition and simply submitting the document to show the beneficiary has been "formally recognized" by the petitioner. In either scenario, the document was issued on March 5, 2003, nearly two years after the filing of the petition. As such it cannot be used to support the assertion that, *at the time of filing*, the petitioner either recognized the beneficiary as a minister, or that the beneficiary was ordained as a minister. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Prior to filing the appeal, the petitioner had not submitted any evidence that the beneficiary had been ordained as a minister. The petitioner's claim on appeal that the ordination document is evidence of the petitioner's formal recognition of the beneficiary's status does not change the fact that the beneficiary was not ordained a minister, and recognized as such, at the time of filing. Further, as noted by the director in his decision, a lay preacher is not considered a minister for the purpose of special immigrant classification.

As the evidence does not support a finding that the beneficiary will be employed as a minister, the next issue to be determined is whether the beneficiary's position is considered a qualifying occupation.

Rev. Javier Velez, senior pastor of the petitioning church, lists the beneficiary's responsibilities as the leader of worship and dance:

[The beneficiary's] responsibilities and demand to continue this ministry necessitates a forty-hour week. She has to learn and prepare the songs for both services weekly. This requires her to teach these songs to those under that ministry demanding for hours of practice. Following the choice of songs, she has to prepare the choreography for each song and train those of the dance ministry. This does not include all the special services that we bring to the community as an outreach where the ministries have to prepare in addition. She also teaches the biblical theology of worship and dance to those under her supervision and to those in our school of ministry.

Following the director's request for evidence, the petitioner provided a detailed description of the beneficiary's forty-hour schedule:

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| Monday: | 9:00 a.m. – 12:00 noon | Prepares Schedules for: Arts, Sound and Praise and Worship Ministries (with all related paperwork). |
| | 12:00 noon – 6 p.m. | Studies and prepares for evening class (theory & practice) |
| | 6:00 p.m. – 9:00 p.m. | Arts class and rehearsals (consisting of mimes, tambourines and dance) |
| Tuesday: | 10:00 a.m. – 1:00 p.m. | Organizing and maintaining order over all the paperwork corresponding to the ministry. |
| | 1:00 p.m. – 6:00 p.m. | Prepares herself for evening rehearsals or classes (studying, reading, praying) |
| | 7:00 p.m. – 9:00 p.m. | Conducts weekly praise and worship rehearsals (music and voices) |
| | | <ul style="list-style-type: none">• The second Tuesday of every month she has to attend to the Staff meeting with the Senior Pastor.•• The last Tuesday of every month is dedicated to Bible teaching over Praise and Worship. |
| Wednesday: | 12:00 noon- 6:00 p.m. | Prepares for weekly worship services (selects congregational songs in cooperation with the Senior Pastor) |
| | 7:00 p.m. – 10:00 p.m. | Directs the devotional for evening services. |
| Thursday: | 12:00 noon – 5:00 p.m. | Prepares classes and rehearsal for Thursday evenings (performing arts) |

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| | | Reading, praying, watching videos, and Practicing to teach new techniques of Dance and tambourine |
| | 6:00 p.m. – 9:00 p.m. | Conducts rehearsals which consist of warm-ups, going over biblical basis of every step and applying them. And preparing for presentations for special occasions. |
| Friday: | 12:00 noon – 6:00 p.m. | Prepares lesson for evening class and selects congregational songs emphasizing on what the Senior Pastor preaches for Sundays services. |
| | 7:00 p.m. – 9:15 p.m. | Teaches “Called to Worship” class. |
| Sundays: | Regular services | Leads Praise and Worship in one of the two corresponding services |
| | Special services | Leads Arts ministry during devotional (tambourines, dance and mimes) |

The addendum to the petitioner’s bylaws lists further responsibilities associated with the beneficiary’s position, including: supervising the tuning of church instruments, organizing and maintaining a library of church music, care of choir robes, and supervising the associate minister of music.

The petitioner does not explain how the duties listed above, involving the rehearsal and performance of music and dance, maintenance of musical instruments and a library of church music, and caring for choir robes, differ significantly from the duties of an individual in charge of a secular musical ensemble.

Further, the petitioner must show that its religious denomination traditionally views the beneficiary’s work as a paid occupation, rather than a volunteer activity undertaken by a gifted member of the congregation. In this instance, the record is absent any evidence that the beneficiary received any pay for her work. The record contains no paychecks, W-2 forms, or other evidence that the beneficiary’s received pay for her full time work for the petitioner. We note that the Form G-325A, signed by the beneficiary and submitted into the record, reflects that the beneficiary indicates she has been “self-employed” in “various jobs” since 1997. The fact that the beneficiary indicates herself as “self-employed,” is not indicative of a full-time salaried position with the petitioner, much less that other churches within the petitioner’s denomination traditionally hire employees to fill a paid position as a leader of worship and dance.

The regulations indicate that employment by a church or religious organization is not synonymous with employment in a religious occupation. The performance of secular duties is non-qualifying. The duties of a janitor or office secretary are generally unchanged whether those individuals work in a church, a university, or an investment firm. Similarly, the petitioner has not shown that the beneficiary’s core duties are intrinsically religious in nature; there are many secular settings in which individuals rehearse, play music, sing, and dance. Singing songs with religious lyrics and performing dance to accompany religious ceremonies does not change the fundamental nature of that activity.

Finally, although counsel claims that the petitioner “has adequately substantiated the standards to be recognized as a worship and arts ministry leader” and the beneficiary’s qualifications for this position, we find the record continues to remain absent such evidence. Counsel refers to the petitioner’s bylaws and a “Church Operations Manual” that was “compiled by another Evangelical Christian Church.” We are not persuaded by counsel’s claims.

The manual submitted does not demonstrate that the petitioner and the church that compiled the manual are part of the same denomination. Notwithstanding the lack of connection between the two churches, the manual does not document the standards required to be recognized as a worship and arts ministry leader. The portion of the manual submitted by counsel provides a *job description* for the position of a *minister of music*. The position described in the manual appears to be different from that offered by the petitioner and, therefore, has no bearing on the petitioner’s requirements for hiring a leader of worship and arts ministry.

Similarly, the petitioner’s bylaws only provide for the beneficiary’s worship, weekly, and supervisory *responsibilities*. Contrary to counsel’s assertions, the bylaws do not “substantiate [sic] the standards to be recognized as worship and arts ministry leader.”

Regarding the beneficiary’s *past work*, 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 April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a leader of worship and dance ministry throughout the two years immediately prior to that date.

In a letter submitted with the original filing, Rev. Velez, senior pastor of the petitioning church, states:

Let it be known that [the beneficiary] has been a member of our church for the last three and a half years. During this time she has fulfilled all the requirements of membership and taken all required biblical courses at our church. She has demonstrated a faithfulness and excellence as members and in all that she endeavors. Most of all, she has shown a unique and anointed ability to minister to our congregation in song and dance.

For the last two years she has led the congregation in song demonstrating a grace that leads the whole congregation in God’s presence. Furthermore, in the past year she has begun a dance ministry uniting itself to the worship. She has trained nine adults and thirty children during this time establishing and leading an effective ministry with more personas waiting their time for training.

Her responsibilities and demand to continue this ministry necessitates a forty-hour week.

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