

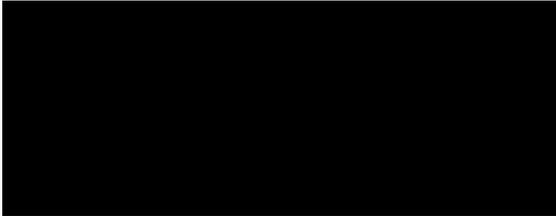
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 22 2005  
WAC 04 017 53530

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:

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California 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 cantor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the position qualified as that of a religious worker, or that the petitioner had the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner submits copies of previously submitted 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 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 on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form 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 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 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) 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 October 24, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a cantor throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted a copy of what purports to be a "certificate" from the Archdiocese of Cali Colombia Liturgical Delegate, Pastor [REDACTED]. The certificate indicates that the beneficiary "has been in our liturgical pastoral for the past 14 years. Her profesional [sic] work has been excellent, as a cantor and master of music and chant." Pastor [REDACTED] purportedly signed the certificate on October 3, 2003; however, the translation certificate is dated May 8, 2002. The petitioner submitted no evidence to explain this inconsistency. 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). Additionally, the provisions of 8 C.F.R. § 103.2(b)(3) require that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate." However, the translation submitted by the petitioner does not comport with the regulatory requirement as it is a partial translation. In fact, the certificate of translation indicated that it was a translation of only the "pertinent evidence."

Furthermore, the petitioner submitted no documentary evidence to corroborate the beneficiary's employment during the two-year period preceding the filing of the visa petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In a request for evidence (RFE) dated September 15, 2004, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning October 24, 2001 and ending October 24, 2003 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific job duties, the number of hours worked, remuneration, level of responsibility and who supervised the work. Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported him or herself (and family members, if any) during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted a statement from [REDACTED] of the [REDACTED] A. in Cali, Colombia. The translation accompanying the document does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, and did not certify that he or she is competent to translate from Spanish into English. The document apparently indicates that the beneficiary served as a cantor with the organization from 1999 to 2003 and was paid a stipend of the equivalent of \$1,500 (U.S.) per month. As the translation does not comply with the provisions of the regulation, however, it has no evidentiary value.

The petitioner also resubmitted the certificate from Pastor Serrato; however, the accompanying certificate of translation is not signed. Further, the petitioner submitted no contemporaneous evidence such as canceled checks, pay vouchers, pay receipts, verified work schedules or other documentary evidence to substantiate the beneficiary's employment. *Matter of Soffici*, 22 I&N Dec. at 165.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the 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).

The term "continuously" also is discussed in a 1980 decision where 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).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, the petitioner submitted a complete translation of Reverend Serrato's October 3, 2003 certificate.<sup>1</sup> The certificate states that the beneficiary has served in various capacities within the Archdiocese of Cali for 14 years. However, the petitioner again failed to submit documentary evidence to corroborate this employment by the beneficiary. *Matter of Soffici*, 22 I&N Dec. at 165.

The evidence does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The second issue on appeal is whether the position qualifies as that of a religious worker.

According to the regulation at 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 as a religious worker.

In its letter of October 17, 2003, the petitioner stated that the beneficiary would "lead all singing in the church, to start any chant, and be watchful to prevent or correct mistakes of singers placed under her. She will be responsible for the immediate rendering of the music, showing the course of the melody by movements of the hand." The petitioner did not identify the terms of employment for the position.

In response to the director's RFE, the petitioner stated:

There will be no problem about [the beneficiary's] support during the period of time in which she holds an official assignment in our dioceses of Los Angeles, she gets an [sic] stipend of \$100.00 per Mass Service for wedding[s], 15 Years, Funerals etc. pay by the parishioners nor will she become a burden on any federal, state or local authorities.

The petitioner's letter does not reflect the number of hours that the beneficiary is expected to work, and it is unclear as to the rate of compensation offered. The petitioner does not clearly state that the beneficiary will be compensated for work other than on special occasions.

Further, the duties as described by the petitioner in its letter of October 17, 2003 reflect that the duties are more consistent with those of a choir director. According to the Dictionary of Occupational Titles (DOT), a cantor:

Chants and reads portions of ritual during religious services, and directs congregants in musical activities. Arranges musical portion of religious services in consultation with leader of congregation. Chants or recites religious texts during worship services or other observances and trains and leads congregants in musical responses. May create variations of traditional music or compose music for services. May train and direct choir or teach vocal music to youth or other groups of congregants.

The petitioner stated only that the beneficiary would "start any chant," but is otherwise responsible for directing the performance of others.

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

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<sup>1</sup> The translation incorrectly identifies the date as August 3, 2003.

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.

On appeal, the petitioner expands upon the duties of the proffered position. However, the duties of the position appear to have been lifted word for word from the definition listed in the DOT. A petitioner cannot, on appeal, offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Furthermore, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *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).

The evidence presented does not establish that the position of "cantor" within the petitioning organization is a religious occupation within the meaning of the statute and regulation. Further, the petitioner submitted no evidence that the position of choir director, implied by the defined duties as the proffered position, is traditionally a permanent, full-time, salaried occupation within the petitioner's denomination.

The evidence does not establish that the proffered position qualifies as that of a religious worker within the meaning of the statute and regulation.

The third issue to be discussed is whether the petitioner established that it has the ability to pay the beneficiary the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner submitted no evidence of this regulatory requirement. Therefore, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage.

Beyond the decision of the director, the petitioner has not established that it is a bona fide nonprofit religious organization. This deficiency constitutes an additional ground for denial of the petition.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

With the petition, the petitioner submitted a copy of a June 30, 1993 advance ruling letter from the IRS to the House of Mercy, granting that organization a preliminary exemption under section 501(c)(3) as an organization described in sections 509(a)(i) and 170(b)(1)(A)(vi). Although the House of Mercy and the petitioner share a mailing address, the petitioner submitted no evidence of its relationship with the House of Mercy. We note that the federal tax identification numbers for the House of Mercy as listed on the IRS letter and for the petitioner as listed on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, are different. The advance ruling for the House of Mercy ended on December 31, 1997.

In response to the director's RFE, the petitioner submitted a June 12, 1988 letter from the IRS to the House of Mercy, advising that organization that its tax-exempt status remained in effect following expiration of the advance-ruling period. However, the petitioner submitted no additional evidence to explain its relationship to the House of Mercy. Further, the IRS ruling did not grant the House of Mercy a group exemption that would be applicable to any of its subordinate units.

The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B). Such documentation must establish the religious nature and purpose of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

The evidence does not establish that the petitioner is a bona fide nonprofit religious organization

Further beyond the decision of the director, the petitioner has not established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner did not state the full terms of remuneration for the proffered position. According to its letter of October 17, 2003, the beneficiary “gets a stipend of \$100.00 per Mass Service for wedding, 15 years, Funerals etc. pay be the parishioners.” This statement of proposed compensation does not indicate that the beneficiary will be paid for a full-time position or that she would be paid on other than an occasional basis. Part-time or occasional employment is not qualifying employment for the purpose of this employment based visa petition.

The petitioner has not established that it has extended a qualifying job offer to the beneficiary. This deficiency is an additional ground for which the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.