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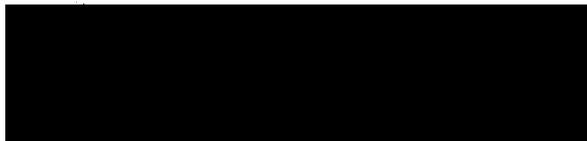
U.S. Department of Homeland Security
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Washington, DC 20529



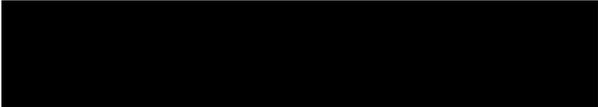
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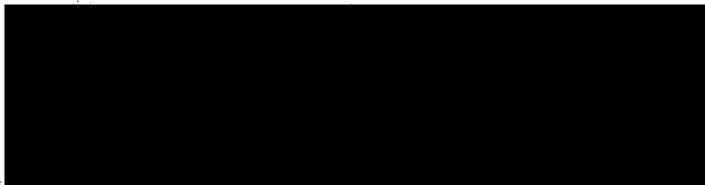


FILE: WAC 00 181 50959 Office: CALIFORNIA SERVICE CENTER Date: **MAY 26 2005**

IN RE: Petitioner: 
Beneficiary: 

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.

Mari Johnson

& Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. In a subsequent appeal, the Administrative Appeals Office (AAO) remanded the petition to the service center for issuance of a new decision. The director denied the immigrant visa petition and certified his decision to the AAO on August 27, 2003. The AAO affirmed the director's decision in a decision dated November 17, 2004, noting that counsel had not submitted a brief or additional evidence in support of the certification. However, subsequent to the AAO's decision, it was determined that a brief and additional documentation had been timely submitted. Therefore, on March 9, 2005, the AAO reopened the matter pursuant to 8 C.F.R. § 103(a)(5)(ii) to consider counsel's brief. Upon review, the decision of the director will be affirmed.

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/conductor. 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 beneficiary possessed the required two years membership in the denomination, or that the petitioner had the ability to pay the beneficiary the proffered wage. The AAO affirmed these determinations by the director.

Documentation submitted with the brief does not overcome the director's grounds for denial of the petition.

The first issue to be addressed is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious occupation or vocation for two full years preceding the filing of the visa petition. The petition was filed on May 31, 2000. Therefore, the petitioner must establish that the beneficiary was a member of the denomination and continuously working in the religious occupation throughout the two-year period immediately preceding that date.

In its decision, the AAO determined that the "certificate of employment" from the [REDACTED] Church in Seoul, Korea, submitted by the petitioner was of no evidentiary value as it was not accompanied by a translation that complied with the provisions of 8 C.F.R. § 103.2(b)(3). Further, the petitioner submitted no corroborative documentary evidence of the beneficiary's employment for any time prior to 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)).

Counsel submitted no additional documentation with the brief to overcome the director's determination. The record does not establish that the beneficiary was continuously employed in a religious occupation for two full years prior to date the petition was filed.

The second issue is whether the petition established that the beneficiary had been a member of the religious denomination for two full years prior to the filing of the visa petition, from May 31, 1998 to May 31, 2000.

On certification, the petitioner submitted a "certificate of assignment" purportedly issued by the Council of Presbyterial Council and the [REDACTED] Council. This document was apparently submitted to establish that the beneficiary had the required two years membership in the denomination. However, as with the "certificate of employment," the translation that accompanies this document also fails to comply with the provision of 8 C.F.R. § 103.2(b)(3), in that the translator not did not certify that the translation was complete and accurate, and did not certify that he or she is competent to translate from Korean into English. Therefore, the document lacks evidentiary value. The petitioner submitted no competent evidence of the beneficiary's

membership in a denomination prior to August 1998, when he became associated with the petitioning organization.

The evidence does not establish that the beneficiary had the required two years membership in the denomination for the period immediately preceding the filing of the visa petition.

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

In his brief, counsel concludes that the petitioner had established that it had the ability to pay the beneficiary the proffered wage. The petitioner submitted copies of its bank statements for the months of January 2002 to August 2002, a statement indicating that it had a certificate of deposit valued in excess of \$21,000 in May of 2000, copies of documents labeled "Annual Expense" for the period of December 2000 to November 2001 and the period of December 1999 to November 2000.

The regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. However, as noted in the AAO's prior decision, the petitioner did not submit any of the required types of primary evidence.

The evidence does not establish that the petitioner had the ability to pay the proffered wage.

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 decision of the director will be affirmed and the petition will be denied.

ORDER: The director's decision of August 27, 2003 is affirmed. The petition is denied.