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U.S. Citizenship  
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 09 2007  
EAC 04 247 52415

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:

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.

*Robert P. Wiemann*  
fr Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Christian church of the Church of God denomination. 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 minister of music. The director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious occupation, or that the beneficiary qualifies for the position offered.

On appeal, the petitioner submits a letter from its senior pastor and an excerpt from a denominational publication.

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 denial rests on two related issues: whether the petitioner seeks to employ the beneficiary in a qualifying occupation, and whether the beneficiary is qualified for that occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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.

Citizenship and Immigration Services 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.

8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to establish that the beneficiary is qualified to perform the job offered. Thus, if the religious denomination has any formal requirements for a given occupation, the petitioner must demonstrate that the beneficiary meets those requirements.

Rev. [REDACTED] Authorized Bishop of the petitioning church, describes the position offered to the beneficiary:

We are offering to [the beneficiary] a Permanent position as minist[er] of music and his duties and responsibilities shall be:

1. – Promote the minist[ry] of music in the church.
2. – Implement and supervise under the of the board [*sic*] and national overseer, the music program promoted by [the] department of music ministries.
3. – Assist in the placement of church musicians when called upon.
4. – Assist Local churches in establishing and improving their music programs.
5. – Periodically study the musical needs and interest of the local church.

The petitioner repeats this same list of duties and responsibilities in every subsequent submission.

Rev. [REDACTED] added that the beneficiary is an "ordained minister" with "full power and authority to" perform such functions as "Serve as pastor of the church," "Baptize Converts," "Administer holy Sacraments" and "Solemnize rites of matrimony" (*sic*).

A certificate from the Christian Music School in Lima, Peru, indicates that the beneficiary is qualified as a Standard Music Teacher. The initial submission, however, contained no documentary evidence that the beneficiary is an ordained minister as the petitioner claims.

On April 11, 2005, the director requested "evidence that the beneficiary's primary duties . . . require specific religious training beyond that of a dedicated and caring member of the congregation or body. The evidence must establish that the job duties are traditional religious functions above those performed routinely by other members."

In response, Rev. [REDACTED] stated: "The Church of God demands that our religious worker[s] be fully trained and certified for at least 4 years," and added: "only those with verifiable credentials will be admitted into our organization." The petitioner did not, however, submit any documentation of the beneficiary's credentials as an ordained minister.

The petitioner also submitted a weekly schedule, which the petitioner stated would commence once the beneficiary received authorization to work in the United States. This schedule referred to the beneficiary with the title "Rev." and put significantly less emphasis on music than the list of duties provided by the petitioner. The schedule includes several duties such as "Preaching," "Directing the Worship Service," "Bible Classes" and "Youth Counseling." The schedule mentions music only twice: "Teaching Music to the Youth" for one hour on Monday mornings (from 9:00 a.m. to 10:00 a.m., a time when most children are in school except in the summer), and "Teaching Music to the Parishioners" for two and a half hours on Tuesday nights.

The director denied the petition, stating:

The record contains no evidence to indicate that a position for a full-time religious worker exists in your religious organization. It follows, therefore, that no specific religious training beyond that of a dedicated and caring member of the congregation would be required. Classification as a special immigrant religious worker is not available to aliens who will perform duties requiring no specific religious training or qualifications.

After careful and prolonged consideration of this issue, the AAO finds that the "training" issue has received a disproportionate amount of weight in adjudications of special immigrant religious worker petitions. Obviously, when a given position clearly requires specific training, 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the alien possesses that training; but the issue of training should not be a primary factor when considering the question of whether that position relates to a traditional religious function. Of greater importance is evidence showing that churches or other entities within a given denomination routinely employ paid, full-time workers in comparable positions, and that those positions do not embody fundamentally secular tasks, indistinguishable from positions with secular employers.

The director noted that, while the petitioner has claimed that the beneficiary is an ordained minister, the record contains no documentation to confirm that claim. The director concluded: "The unsupported assertions in the record do not adequately establish that the beneficiary and the job offer qualify for the religious occupation discussed herein."

On appeal, Rev. [REDACTED] again attaches the title "Rev." to the beneficiary's name. The petitioner submits photocopied pages from the *Minutes of the 68<sup>th</sup> General Assembly*. The printed title does not identify the religious denomination, but the text contains several references to the Church of God. The following passages appear on page 222:

## **S61. MINISTER OF MUSIC AND MINISTER OF CHRISTIAN EDUCATION**

### **I. Qualifications of Ministers of Music and Ministers of Christian Education**

1. Must have the baptism in the Holy Ghost
2. Must be thoroughly acquainted with the Teachings and Doctrines of the Church of God. . . .
3. Must possess the necessary training. . . .

4. Must successfully pass the examination given by a duly constituted board of examiners.

## II. Rights and Authorities

The minister of music and/or minister of Christian Education shall have full right and authority to

1. Serve as music director, Christian education director, teacher, or assistant pastor of local churches.
2. Publish, defend, and preach the gospel of Jesus Christ.
3. The minister of music and/or minister of Christian education shall not be eligible for ordination as long as he [or she] remains solely in the field of music or Christian education. . . .
4. In the event the minister of Christian education or minister of music enters into a pulpit ministry, we recommend that he/she be given credit for his/her period of licensure [as minister of Christian education or minister of music] and that this period serve in lieu of the exhorter's licensure.

(Brackets in original.) The above documentation supports the finding that the Church of God traditionally recognizes the position of minister of music as a religious occupation, and we therefore withdraw the director's finding to the contrary. The same documentation also, however, specifically states that a "minister of music . . . shall not be eligible for ordination" while music remains that individual's sole pursuit. As late as the appeal, Rev. ████████ repeats the five-item list of duties and responsibilities, every one of which mentions music. These duties would seem to disqualify the beneficiary from ordination as a minister. Nevertheless, Rev. ████████ has also repeatedly claimed that the beneficiary is an ordained minister with authority to perform the functions of clergy, and the petitioner has submitted a work schedule that has little in common with the five-item list of duties.

The petitioner's seemingly contradictory assertions regarding the beneficiary's duties raise doubts as to the credibility of those assertions. Similarly, evidence that the petitioner has submitted on appeal contradicts the petitioner's own claims about the beneficiary's duties and functions as a minister of music. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 592.

The *Minutes* indicate that lay ministers (a classification that includes "music ministry" according to section S62) must be certified, and that every "lay minister's certificate must be renewed every two years by the local church where the lay minister is a member." The record does not contain any documentation that the church in Lima has ever certified the beneficiary as a music minister.<sup>1</sup> Given the credibility issues arising from the

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<sup>1</sup> We note that a brochure in the record places the beneficiary at the petitioning church in June 2005, nearly ten months after the petition was filed in August 2004. Section S62 I.2. of the *Minutes* states: "Whenever a lay minister transfers to another Church of God, the present certificate is terminated. The new church may approve the applicant and issue the lay minister's certificate." The record contains no evidence that the petitioning church issued the required certificate to

petitioner's contradictory claims, it is significant that the petitioner has never submitted copies of these required certificates.

The petitioner has, therefore, demonstrated that the Church of God denomination has specific requirements for the position of minister of music, but the petitioner has not shown that the beneficiary meets those requirements as required by 8 C.F.R. § 204.5(m)(3)(ii)(D). The director's decision rested to a significant degree on the question of how the beneficiary's qualifications relate to the position offered, and the available evidence leads us to affirm that decision.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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 experience in the religious vocation, professional religious work, or other religious work.

Here, the petitioner has stated that the beneficiary has worked at a Church of God church in Lima, Peru since 1995, but the record contains nothing from that church to confirm the dates or nature of the beneficiary's work there, or, indeed, to confirm that the beneficiary worked there at all. The petitioner claims that the beneficiary possesses the required experience, but the petitioner is located in New York rather than Peru. The petitioner also claims that its "overseer has . . . access to all employees records and information," but the petitioner has not submitted copies of any such records relating to the beneficiary's work in Peru. Even in the best of circumstances, it cannot suffice simply to claim to have access to such records, and here, the petitioner's credibility is compromised for reasons already discussed. We find that the petitioner has not adequately established that the beneficiary meets the two-year continuous experience requirement. We note that this finding is separate from the affirmation of the director's finding regarding the beneficiary's qualifications. This additional finding regarding the beneficiary's experience does not affect the outcome of the AAO's decision; the AAO would have dismissed the appeal even without this additional finding.

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.

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the beneficiary. If the beneficiary ever held a certificate from the church in Lima, the beneficiary's departure from Lima invalidated that certificate.