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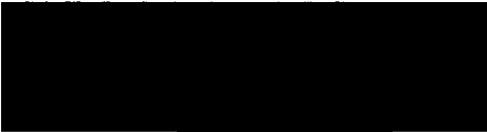
U.S. Department of Homeland Security  
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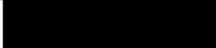
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FILE:



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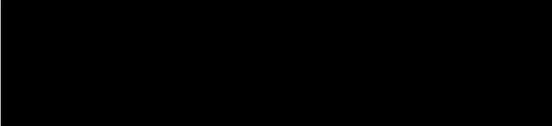
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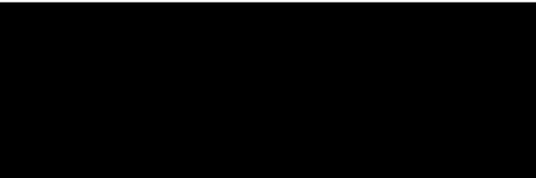
Petitioner:



Beneficiary:

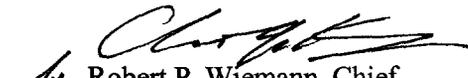
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner is a church of the Chaldean Catholic rite. 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 the requisite two years of continuous work experience as a cantor immediately preceding the filing date of the petition; that the beneficiary possessed the necessary qualifications for the position; or that the position of cantor qualifies as a religious occupation.

On appeal, the petitioner submits letters from church officials in the United States and Iraq, and arguments from counsel.

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 concerns the continuity of the beneficiary's past work as a cantor. 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. The petition was

filed on June 23, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a cantor throughout the two years immediately prior to that date.

In a May 4, 2006 letter accompanying the initial submission, [REDACTED] stated that the beneficiary "has been employed at the [petitioning] establishment as a full time Cantor since July 2005." This letter covers less than half of the two-year qualifying period. The initial submission contained no information about the beneficiary's employment between June 2004 and July 2005.

On April 4, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence regarding the beneficiary's work history during the 2004-2006 qualifying period, including evidence of remuneration. In response, the petitioner submitted copies of tax documents showing that the petitioning church paid the beneficiary \$14,892.17 in 2006.

[REDACTED] in a letter dated April 25, 2007, stated: "[s]ince June 2005 until today, [the beneficiary] has been working and performing his duties [as a cantor], 40 hours per week, plus some extra hours as needed by the Pastor." [REDACTED] says nothing about the beneficiary's claimed work as a cantor before June 2005.

The petitioner submitted a translated letter from [REDACTED] of the [REDACTED] of Zakho and Duhok in Iraq. The letter indicated that the beneficiary "worked for us . . . as a cantor" beginning in 1998 until the "present time." The letter is undated, and therefore it is unclear what the Bishop meant by the "present time." The Bishop's letter is, therefore, insufficient to establish qualifying employment during the 2004-2006 qualifying period.

Furthermore, a church official in Iraq would not be in a position to attest, first-hand, to the beneficiary's activities in the United States. The record shows that the beneficiary entered the United States on January 25, 2005, several months before he began working for the petitioner in either June or July 2005. [REDACTED] has provided inconsistent starting dates. [REDACTED] made no assertions regarding the beneficiary's activities in the United States during the early months of 2005, before he began working at the petitioning church.

The petitioner also submitted a partial photocopy of the beneficiary's passport. A visa in the passport shows that the beneficiary entered the United States on January 25, 2005 as an F-1 nonimmigrant student, studying at the University of Detroit Mercy. The beneficiary did not change status to that of an R-1 nonimmigrant religious worker until five months later, June 23, 2005.

The director denied the petition on June 19, 2007, stating that the available evidence is insufficient to show that the beneficiary worked full-time as a cantor throughout the two-year qualifying period. The director noted that "the beneficiary entered initially as an F1 student and later was afforded R1 status."

On appeal, counsel claims that the beneficiary worked as a cantor "for the Bishopric of Zakho and Duhok [from] 1998 until July 2005." The record does not support this assertion. The Form I-360 petition and the beneficiary's passport indicate that the beneficiary entered the United States in January 2005, at which point it was no longer possible for him to perform the duties of a cantor in Iraq. Counsel, on appeal, fails to address

the five-month period in early 2005 when the beneficiary was an F-1 student in the United States, unable to work in Iraq and not authorized to work for a church in the United States.

The petitioner, on appeal, submits new letters from [REDACTED] and [REDACTED] asserting that the beneficiary typically worked a full-time work week. These letters, however, do not establish continuous employment from June 2004 through June 2006.

The petitioner has not claimed that the beneficiary worked as a cantor in the United States between January 2005 and June 2005, much less provided any documentary evidence of such work. The petitioner's own claim and documentation, on its face, shows an interruption of at least five months in the beneficiary's work as a cantor during the qualifying period. The interruption may have been longer still. [REDACTED], on appeal, states that the beneficiary worked for the Bishopric "till the second half of 2004." The Bishop does not specify the ending date of the beneficiary's work beyond this broad six-month period. There is no reason to presume that, by "the second half of 2004," the Bishop meant late December of that year.

Review of the beneficiary's passport raises further questions. One page of the passport is designated "Description of Bearer of Passport." On this page, in English, the passport shows the beneficiary's "Occupation" as "Doctor." The passport's "Date of Issue" is shown as October 24, 2004, a date which fell during the two-year qualifying period. Therefore, the passport fails to corroborate the claim that the beneficiary was a cantor in Iraq in late 2004, and indicates instead that he worked in a secular profession at that time. The October 2004 reference to the beneficiary as a "Doctor" coincides with [REDACTED] assertion that the beneficiary's work as a cantor ended during "the second half of 2004."

The information in the beneficiary's passport is consistent with the conclusion that he originally entered the United States as a "Doctor" to study medicine at the University of Detroit Mercy. The record contains nothing from the university to establish that the beneficiary's entry as an F-1 student was related in any way to service as a cantor.

The petitioner's account of the beneficiary's employment history includes a major gap of five months or more during the two-year qualifying period, thereby precluding any finding of continuous work as a cantor during that period. We affirm the director's finding in this regard.

The remaining issues are interrelated, pertaining first to whether the petitioner seeks to employ the beneficiary in a qualifying occupation, and second to whether the beneficiary is qualified to work in 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 prospective employer to demonstrate that the alien is qualified in the religious occupation.

The petitioner's initial submission included no evidence or information about the nature of the position of cantor, or about the beneficiary's qualifications for that position. The director's RFE included instructions to describe the position in detail, and to "[l]ist the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements."

In response, in his April 25, 2007 letter, [REDACTED] stated that the beneficiary's "specific duties are as follows: Training, instruction and singing at the main church services on Sundays and Holy days; He also serves, Masses, weddings and funerals, as well as he joins me in visiting ill people in hospitals besides 3 times of rehearsals every week."

[REDACTED] stated that the beneficiary's "duties consisted of the followings [sic]:"

1. Assisting the priest in all religious functions
2. Teaching religion and language to children and youth
3. Assisting the priest in the distribution of charity
4. Visiting with sick members at home or nursing home

The director, in denying the petition, found that the petitioner had not established that the work of a cantor relates to a traditional religious function in the Chaldean Catholic rite. The director also stated that the petitioner failed to provide the requested "detailed explanation of the position's requirements as well as how the beneficiary meets those requirements."

On appeal, letters from [REDACTED] and [REDACTED] attest to the requirements to become a cantor of the [REDACTED]. We need not address these claims on appeal, because the petitioner made no effort to provide this information when the director first requested it. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). See also *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should

have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the materials submitted on appeal with regard to the beneficiary's qualifications for the position of cantor. The director correctly found, based on the evidence made available at the time, that the petitioner had not addressed the issue of the beneficiary's qualifications for the position. The AAO affirms the director's finding.

We will, however, consider the petitioner's assertions with respect to the related question of whether the position of cantor is a religious occupation relating to a traditional religious function. The petitioner's description of the position, in response to the RFE, amounts to a good faith attempt to address that issue. On appeal, [REDACTED] asserts: "all of our previous cantors were volunteers and our church did not need to employ anyone on a regular permanent basis." This assertion indicates that the petitioning church, itself, did not consider the work of a cantor to be a paid "occupation" until the beneficiary's arrival in 2005.

More favorable to the petitioner is a letter from the [REDACTED] indicating that between 1996 and 1998, the beneficiary earned "the degree of Cantor to lead and teach the Choir, deacons and congregation and Compose Christian Chants." [REDACTED] indicates that the beneficiary "got paid 4000 Iraqi Dinar" for his work as a cantor. [REDACTED]'s earlier letter had also referred to the beneficiary as having "been employed . . . as a cantor," so the more recent reference to a salary is not an entirely new embellishment. These materials indicate that a college-level course of study exists to become a cantor, and that cantors are paid for their work in Iraq, which appears to be at or near the seat of the [REDACTED] (the adjective "Chaldean" referring to the ancient name of a territory within the borders of modern-day Iraq).

The available evidence suggests that the position of cantor is, or at least can be, a religious occupation within the [REDACTED] rite, and the AAO hereby withdraws the director's finding in this regard. More troublesome, when judging the validity of the petitioner's job offer to the beneficiary, are the petitioner's admission that the petitioning church has never before paid its cantors, and the beneficiary's original entry into the United States for reasons that appear to have had nothing to do with work as a cantor.

For the reasons set forth above, the AAO finds that the position of a cantor may qualify as a religious occupation, but the petitioner did not timely comply with the director's request for evidence that the beneficiary qualifies to work in that occupation. Furthermore, the AAO finds that the petitioner has not demonstrated, or even claimed, that the beneficiary worked continuously as a cantor throughout the two years immediately preceding the petition's filing date, the beneficiary having entered the United States as an F-1 student with a doctor's passport at least five months before he began working for any identified church in the United States.

The appeal will be dismissed 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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.