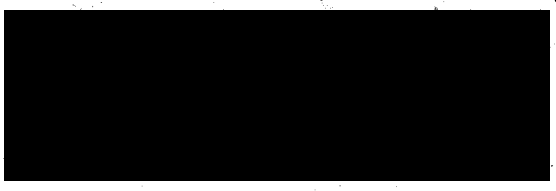
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY



NOV 23 2004

FILE: WAC 03 108 54573 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: 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.

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 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 choir director. The director determined that the petitioner had not established that the position of choir director qualifies as a religious occupation.

On appeal, counsel cites a District Court decision said to be "strong and persuasive judicial authority directly on point."

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).

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.

Rev. [redacted] senior pastor of the petitioning church, lists the beneficiary's responsibilities as choir director:

1. Select choir music appropriate for each service of worship, and other services as needed, in concert with the Pastor. Maintain an advance music plan for the upcoming four (4) months . . . ;
2. As directed by the Pastor, arrange for music and offertories for worship services, including musical groups and instrumentalists. Arrange for special music as necessary;
3. Lead the congregation in praise music at worship services when necessary;
4. Hold minimum of one choir rehearsal per week during choir season . . . ;
5. Be responsible for recruiting choir members;
6. Direct the choir during worship services and special services as requested;
7. Plan choir budget and keep records of expenditures. . . . Purchase and keep file of choir music . . . ;
8. Plan and coordinate purchase of choir robes, stoles, and music folders, as needed;
9. Notify Worship Commission when tuning of pianos and organ is necessary;
10. Plan, coordinate, and lead the annual choir retreat;
11. Attend Worship Commission monthly meetings, and coordinate the choir program with them and the Worship Band;
12. Work with current and future choir members to develop vocal skills;
13. Develop and work with children and youth choirs to provide special music as requested;
14. Participate in ongoing education, i.e., summer music camp or other workshops as approved by the Pastor.

The petitioner does not explain how the duties listed above, involving musical rehearsal and performance, purchase of musical supplies, and maintenance of musical instruments, differ significantly from the duties of an individual in charge of a secular musical ensemble.

The director concluded that the beneficiary's work with music is fundamentally secular in nature, and denied the petition on the basis that a choir director does not hold a religious occupation in the petitioner's denomination. On appeal, counsel states:

> The arguments made by the Director has [sic] been judicially rejected in strong language: it is "really beyond dispute" that a music position "qualifies as a religious occupation." And the director's imposisiton [sic] of a specific course of learning to qualify as a religious occupation "is an extraordinarily arbitrary and mechanistic position." *Perez v. Ashcroft*, 236 F.Supp. 2d 899 (N.D. Ill 2002).

Counsel provides no other arguments on appeal; the only accompanying documentation is a copy of the judge's decision in *Perez v. Ashcroft*. In that decision, the judge did not state "*a* music position 'qualifies as a religious occupation.'" Rather, the judge stated "it is really beyond dispute that *his* position as music director qualifies as a religious occupation," referring to the specific facts of that particular case. The decision is clearly not a blanket ruling that *every* church music director works in a qualifying religious occupation. Traditional religious functions vary from denomination to denomination. The employer and alien in *Perez v. Ashcroft* belonged to the Southern Baptist denomination, whereas the matter now at hand concerns the Presbyterian Church of America, one of several Presbyterian denominations active in the United States.

Counsel is correct that the judge in *Perez v. Ashcroft* rejected the standard that a religious occupation must require "a detailed and specific course of training," but this was not the sole line of reasoning in the director's decision. 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 "religious training" requirement was an attempt, however flawed, at distinguishing between secular and religious duties. 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, and sing. Singing songs with religious lyrics does not change the fundamental nature of that activity.

Furthermore, 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 musically gifted member of the congregation. The fact that this particular church has paid the beneficiary for her work does not establish that parishes within the Presbyterian Church of America traditionally employ paid choir directors.

The petitioner's entire appeal relies on *Perez v. Ashcroft*, and the presumption that the fact pattern in the present proceeding closely mirrors that of the court case. Notwithstanding counsel's selective quotation from the court decision, replacing "his position as a music director" with "a music director position," the petitioner has not established that the fact patterns are thus aligned. The AAO does not dispute that some music director positions qualify as religious occupations, and the AAO has, in fact, sustained a number of appeals in the face of persuasive evidence. Nevertheless, just because *some* musical directors may qualify for immigration benefits, it does not follow that *all* musical directors, or this particular beneficiary, so qualify. Each petitioner must establish eligibility case by case, and *Perez v. Ashcroft* does not eradicate this burden of proof or abrogate individual consideration of each petition.

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.