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

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 07 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Marc Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 choral conductor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a choral conductor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the position of choral conductor qualifies as a religious occupation.

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 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 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 November 18, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a choral conductor throughout the two years immediately prior to that date.

Rev. Paul Min, president of the petitioning church, states that his church has "a continued need for a Church Choral Conductor. This position would entail conducting our Church choir and orchestra for our daily worship services and for special occasions." In a separate declaration, Rev. Min states that the beneficiary "has been serving as Church Choral Conductor from Dec. 1997 to present." Rev. Min indicates that the

beneficiary worked at EunHe Presbyterian Church from 1997 to May 2000, and at the petitioning church from June 2000 onward.

Most of the documentation in the record consists of statements signed by Rev. Min, who does not explain how he has personal knowledge to attest to such events as the beneficiary's past employment at other churches or her 1978 baptism.

The director requested "a detailed description of the beneficiary's prior work experience for the immediate past two years including . . . duties, hours, and compensations," accompanied by supporting evidence including tax records.

In response, the petitioner has submitted Forms W-2, showing that the petitioner paid the beneficiary $7,200 in 2000, and $14,400 in both 2001 and 2002. The petitioner's response did not address the director's request for details about the beneficiary's duties or hours worked.

Counsel states "[t]he beneficiary studied theology . . . in the Master of Religious Education degree program at Luther Rice Seminary from January 1999 to June 2000. Following the completion of 21 credits toward the degree, she transferred to Atlanta Bible School and Seminary in August of 2000, where she has been studying for her doctorate in Religious Music Education." There is no explanation as to why Rev. Min's earlier statement, which mentioned Luther Rice Seminary, did not mention the beneficiary's then-ongoing studies at Atlanta Bible School. Counsel does not specify how the beneficiary's time is divided between work for the petitioner and seminary studies.

The director denied the petition, in part because the petitioner had not established that the beneficiary's past experience has been full-time. The petitioner had failed to address the director's request for information about the beneficiary's hours of work, and the assertion that the beneficiary is also studying for a doctorate tends to indicate that those studies reduce the number of hours that the beneficiary has been available to work for the petitioner. We note that 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). Thus, studies that interfere with one's ability to work full-time are interruptive of continuous service, even if those studies are related to religious work.

On appeal, Rev. Min asserts that the beneficiary has worked "40 hours per week from July 1, 2000 to Aug. 12, 2003." Despite the director's specific request for detailed information regarding the beneficiary's schedule, the petitioner offers only the flat statement that the beneficiary works 40 hours per week. In the absence of documentary evidence establishing that the beneficiary has worked those hours (the Forms W-2 establish paid employment but not the beneficiary's hours or duties), the petitioner should at least credibly explain how the beneficiary's duties occupy the claimed 40 hours a week.

Throughout this proceeding, despite plainly-worded requests from the director, the petitioner has been either unable or unwilling to specify what the beneficiary does throughout the course of a forty-hour work week. This necessarily raises questions about the actual extent of the beneficiary's work for the petitioner (which, in turn, has filed petitions for every one of its paid employees). Because these questions remain unanswered, despite the director's attempts to solicit answers, we affirm the director's decision that the petitioner has not met its burden of proof regarding the beneficiary's past experience.

The remaining issue is whether the petitioner seeks to employ the beneficiary in a qualifying 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.

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; nonqualifying positions 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. Min states that the beneficiary holds a bachelor's degree in music composition, a master's degree in church music education, and that the beneficiary took a "master course majoring in religious education" from January 1999 to May 2000. Rev. Min's initial statements, however, offered little description of the beneficiary's duties as a choral conductor. Therefore, the director requested such information. In response, counsel states that the beneficiary's "duty is to accompany hymns during worship hours," and "to accompany, conduct and coach the church string orchestra." The petitioner has not explained how these activities are primarily religious in nature, rather than secular duties that any trained musician or arranger could perform.

In denying the petition, the director noted that the petitioner had failed to show that the denomination traditionally employs paid, full-time workers in the beneficiary's capacity. The director also stated that the petitioner had failed to provide "the particulars about the music department, the music ministry, or the position." On appeal, counsel contends that the petitioner had already submitted sufficient evidence to meet its burden of proof. The petitioner provides no further information about the proffered position.

The petitioner has submitted nothing from the denomination to show that the denomination recognizes choir conductors as being traditionally in a paid, full-time occupation. The petitioner claims that the beneficiary has worked in a similar capacity for other churches as far back as 1992, but the record contains no corroboration from the other churches, nor any evidence to show that Rev. Min is in a position to speak on behalf of those churches. In general, the petitioner has relied heavily on uncorroborated assertions from Rev. Min, which lack critical details even after the director had instructed the petitioner to provide those details.

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.