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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 03 2005

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IN RE: Petitioner: [redacted]
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:

[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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 pianist. The director determined that the petitioner had not established that the position qualified as that of a religious worker. The director further 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.

On appeal, counsel submits a brief and copies of previously submitted documentation.

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 alien must be coming to the United States at the request of the religious organization to work in a religious occupation. 8 C.F.R. § 204.5(m)(1). 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 position offered by the petitioner is that of a pianist. In a letter dated January 17, 2002, the petitioner's pastor stated that in addition to playing the piano, the beneficiary had been "actively involved in the Weekly Bulleton [sic] Committee, where they type and organize the outline of each Sunday service." In his cover

letter, counsel stated that the specific duties of the position included "1) planning and picking out the songs to be played; 2) coordinate with the choir on the type of music to be played; 3) practice with the choir, while helping the choir instructor with instructing the choir members; 4) perform alone in front of the church on special praise nights." The record, however, contains no evidence to substantiate counsel's statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In a request for evidence (RFE) dated February 12, 2003, the director advised the petitioner that it had failed to adequately establish the nature of the duties to be performed, and instructed it to provide a detailed description of the "actual routine day to day duties to be performed by the beneficiary. Include an estimate of the percentage of weekly hours the beneficiary will dedicate to each specific task identified." The petitioner did not provide a detailed description of the beneficiary's duties. Instead, counsel stated in his cover letter that the beneficiary would spend 60 percent of her time coordinating and training with the choir, 20 percent of her time working with the choir to "harness" their skills, and 10 percent of her time performing unaccompanied on special praise nights. Again, counsel submitted no evidence to corroborate his statements. *See id.*

The statute is silent on what constitutes a "religious occupation" and the regulation 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. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) 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.

On appeal, the petitioner submits a weekly work schedule, detailing the specific duties that the beneficiary has performed in the proffered position and hours devoted to them. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The petitioner submitted a letter from Dr. who states that based on his training and experience, there is a difference in the music of an church and the traditional church. Nonetheless, Dr. oes not explain how these differences raise the position of pianist in an

to that of a religious occupation. The petitioner submitted no evidence that the position of pianist is recognized or defined as a religious occupation within the organizational structure of the church. Further, the petitioner stated that the beneficiary began working for the petitioning organization in January 2001. According to counsel, the petitioner has no paid employees. Therefore, the proffered position, as it existed in the petitioning organization, was uncompensated. There is no evidence that anyone occupied the position on a full-time, permanent basis before the beneficiary began her association with the petitioning organization.

The evidence does not establish that the proffered position is a traditional, full-time, salaried position within the petitioner's denomination, or that the position is recognized and defined by the petitioner's governing body.

The director further determined that the petitioner had not established that the beneficiary had been continuously employed in a qualifying religious occupation for two full years preceding the filing of the visa petition.

As discussed above, the petitioner has not established that the proffered position is a religious occupation within the meaning of the regulation. The petitioner also failed to establish that the beneficiary was engaged as a pianist for two full years preceding the filing of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation 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."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) 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 January 25, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a pianist throughout the two-year period immediately preceding that date.

In its letter accompanying the petition, the petitioner identified the proffered position as that of music minister. The petitioner stated that the beneficiary was ordained by the church and authorized to preach. It stated that the

beneficiary's duties would be to "head and coordinate our praise and worship, and be the pastor in charge of our music, and native language interpreter department."

As noted previously, the petitioner stated that the beneficiary began serving as its pianist in January 2001. The evidence does not reflect that the petitioner compensated the beneficiary for her services, and the petitioner provided no documentary evidence of the beneficiary's employment with it. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner submitted a document entitled "Account of Payment," which purports to indicate that the beneficiary worked at the Church from March 1, 1999 to December 31, 2000, with a beginning monthly salary of 80,000 won and an ending monthly salary of 120,000 won. However, the translation accompanying this document does not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Therefore, the document has little evidentiary value. Further, the petitioner submitted no evidence, such as canceled checks or pay vouchers, to substantiate the beneficiary's employment with the Church. *See Id.*

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where 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).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is

not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

The evidence does not establish that the beneficiary was not dependent on secular employment for her financial support during the two years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that it has extended a permanent job offer to the beneficiary. In his letter of January 17, 2002, counsel stated that the petitioner intended to employ the beneficiary for a period of three years. The Act at section 101(a)(15)(R) excludes from the definition of immigrant aliens who seek to enter the United States for a period of employment for five years or less. Thus, the petitioner's offer of employment to the beneficiary does not meet the requirements for this preference based *immigrant* visa 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.