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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: CALIFORNIA SERVICE CENTER Date: JAN 14 2005
WAC 01 121 53788

IN RE: Petitioner: [redacted]
Beneficiary:
a.k.a. [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:

[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 Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The director certified the decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the revocation on July 29, 2004.

Following litigation, the United States District Court, Central District of California, Southern Division, remanded the matter to Citizenship and Immigration Services (CIS) on December 13, 2004. *The Paul Mission Church et al., v. Tom Ridge et al.*, No. SA CV 03-1358 GLT (C.D. Cal. Dec. 13, 2004) (hereafter *Paul Mission*). The Court ruled that the AAO had failed to address certain material questions in its July 29, 2004 decision. In compliance with the remand order, the AAO hereby withdraws its decision and remands the matter to the director for further action and consideration.

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, 8 U.S.C. § 1153(b)(4), to perform services as a minister of music. The issue requiring resolution concerns the beneficiary's past experience. The petitioner must establish that the beneficiary had the requisite two years of continuous work experience as a music minister immediately preceding the filing date of the petition.

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 February 21, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister of music throughout the two years immediately prior to that date.

"Continuous" in this context does not simply mean that the beneficiary was performing the work at the beginning and at the end of the two-year period. Case law holds that part-time work is not continuous. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Also, a circular letter which expressed the joint views of the Departments of State, Labor, and Justice, indicates that the continuity of qualifying work is interrupted by "activities inconsistent with the theory that [the alien] was attempting continuously to carry on his vocation." C.L. 338, May 16, 1939, quoted in *Matter of B*, 3 I&N Dec. 162, 164 (CO 1948). It was determined, in *Matter of B*, that the alien in that case worked continuously, in part because he did not undertake any other occupation or vocation. *Id.* at 164. Thus, outside work is plainly a factor to consider when determining if the alien's activities are inconsistent with the required continuous work.

The director has previously noted that, in conversation with investigators from Immigration and Customs Enforcement, the beneficiary "did admit to doing some sporadic 'freelance' composing with her husband who works as a composer for various Hollywood post-production sound studios." In an attempt to determine how "sporadic" this film work was, the AAO consulted the Internet Movie Database, http://www.imdb.com, which indicates that the beneficiary has received credit as a "score coordinator" on five films released during the 1999-2001 qualifying period: *Entrapment* (1999), *In Too Deep* (1999), *The Big Kahuna* (1999), *The Hurricane* (1999), and *Wonder Boys* (2000). The beneficiary has also worked as a composer or score coordinator on several subsequent films.

The petitioner has submitted copies of the beneficiary's 1999 and 2000 income tax returns, which reflect no income from any of her film projects during those years. The AAO stated:

> The beneficiary's work in film is particularly significant given her previous college studies, concentrating in film scores. These studies and the beneficiary's subsequent work, considered together, point toward the conclusion that the beneficiary intends to continue a career in the film industry. Congress did not create the special immigrant religious worker program as a means to facilitate the immigration of film composers.

AAO decision, July 29, 2004, at 6 and 8-9. The Court offered the following reaction to the AAO's decision:

> Plaintiffs assert the movie credits were freelance projects that did not interrupt [the beneficiary's] work in music ministry. AAO apparently did not inquire into the nature of the scoring work [the beneficiary] performed, how many hours [the beneficiary] spent on this work, or how many films per year would occupy someone full time in the industry. AAO notes [the beneficiary's] tax returns do not show income from the scoring work. However, there is no evidence the movie companies issued payments to her.
>
> The decision of AAO may have been entirely appropriate. However, unanswered questions leave the Court unable to rule on the "arbitrary and capricious" issue. Therefore, the Court will REMAND the matter for further administrative reconsideration of this matter. Plaintiffs shall be given full opportunity to appear and be heard on these additional matters.

Paul Mission at 8 (citation omitted).

The "unanswered questions" cited by the Court, and relevant to the beneficiary's work during the qualifying period, would appear to include the following:

- When did the beneficiary begin work on each film?
- When did the beneficiary complete work on each film?
- How many hours per day, on average, did the beneficiary devote to her film work during each film project?
- Where did the beneficiary perform her film score work? Did she work independently and supply finished work by mail or courier, or did she work at a studio or the offices of a production company?
- What is the typical pay scale for a score coordinator for a major motion picture?
- Did the beneficiary receive any payment as score coordinator for her 1999-2000 films? If so, how much did she receive? If she received no payment, why was she not paid?

[redacted] is a credited score coordinator for all five of the films for which the beneficiary received credit during 1999 and 2001, and he is a credited producer or co-producer for three of those film scores. Flavio Motalla produced or co-produced four of those five film scores. The beneficiary has continued to work with both of these individuals, with Mr. [redacted] on *The Grudge* (2004) and with Mr. [redacted] on *Beauty Shop* (to be released in 2005).

Because Messrs. [redacted] and [redacted] were involved with most or all of the beneficiary's film work during 1999 and 2000, the AAO believes that these individuals are in a position to provide vital information regarding the amount of time that the beneficiary devoted to film scoring work, the period of time during which she

performed that work, and possibly the beneficiary's remuneration. The director should, therefore, instruct the petitioner to obtain statements (in the form of sworn affidavits if possible) from both of the above individuals, including any contact information that may be necessary to verify those statements.

The petitioner should also submit any documentation that may exist, that would tend to corroborate the assertions of Messrs. Christides and Motalla, such as, for example, studio documentation indicating the beneficiary's presence at a recording studio; payroll documentation indicating payments to the beneficiary for her film work; documents from production companies, acknowledging or discussing details of the beneficiary's work, and so on.

With regard to general practices regarding the payment of film score coordinators, materials from the American Federation of Musicians, the American Society of Composers, Authors and Performers, or a comparable body, and from the films' respective production companies would be extremely helpful in resolving general questions, such as whether score coordinators on major Hollywood films are typically unpaid, part-time volunteers, or paid artists who are expected to commit fully and be available for the film projects they serve.

Because the burden of proof is on the petitioner, the director should instruct the petitioner to obtain the necessary statements and documents, and allow a reasonable period for their submission. The Court clearly considers the beneficiary's film work to be material to the outcome of the proceeding. 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). Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is on the petitioner to provide the required materials, not on any CIS office to obtain it on the petitioner's behalf. This in no way, however, precludes the director from independently verifying the petitioner's assertions or evidence (for example, by contacting the purported sources of statements or documents provided by the petitioner). The director must consider not only what the petitioner submits, but also whether this material is amenable to verification and consistent with known facts.

Once the director has been able to determine whether the beneficiary's film scoring work has been a primary source of support, or only an occasional sideline that occupies minimal time and does not interfere with her ability to work full-time for the petitioning church, the director shall issue a new decision.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.