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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: VERMONT SERVICE CENTER Date: JAN 21 2005

EAC 03 100 50612

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, Vermont 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 music director. The director determined that the petitioner had not established that the position qualified as that of a religious worker.

Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit, on which counsel indicated that a brief and/or additional evidence would be forwarded to the AAO within 30 days. As of the date of this decision, more than 13 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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).

According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

The petitioner listed the duties of the proffered position as follows: "selection, training, practice of youth, church and performance choirs; consultation with youth and member groups, participation in musical aspects of Gospel Missionary Tours and . . . leading and coordinating an Out-Reach program through music ministry to institutions such as hospitals, schools, and other churches." The petitioner equates this position to that of a cantor and states that the position is a traditional religious function within the Presbyterian Church. As evidence, the petitioner

submitted a document entitled "Assessment of Church Personnel." The document does not reflect the author of the document or the source of the information contained within it. However, the wording of the document indicates that the petitioner prepared the document. Further, as it is not dated, it is unclear whether the document was prepared solely for the purpose of this visa petition. Additionally, recognition of the position of music director as a traditional religious function within the Presbyterian Church does not establish that the position is also recognized as a traditional religious function within the Methodist Church, the petitioner's claimed denomination.

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 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.

Further, while the determination of an individual's status or duties within a religious organization is not under the purview of CIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

On appeal, counsel states that the evidence showed that the position of music director was defined and recognized by the church. Nonetheless, the evidence does not establish that the position is defined and recognized by the United Methodist Church, the petitioner's denomination, nor does the evidence establish that the position is traditionally a permanent, full-time salaried occupation within the petitioner's denomination. We note further that the petitioner has not established that the position is traditionally a permanent, full-time salaried position within the petitioning organization. The petitioner submitted no evidence that the position existed prior to the beneficiary assuming the role.

The petitioner has not established that the proffered position is a religious occupation within the meaning of these proceedings.

Beyond the decision of the director, the petitioner has not established that the beneficiary has been continuously engaged as a music director for two full years preceding the filing of the visa petition. This deficiency constitutes an additional ground for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an 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 February 6, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

The petitioner states that the beneficiary began her employment with the petitioning organization in March 2002. In its letter of December 19, 2002, the petitioner stated that the beneficiary graduated from the Royal Scottish Academy of Music and Drama in Glasgow, Scotland in 2001, and "performed musically in numerous programs in the United Kingdom, Korea and the United States."

The petitioner submitted copies of a June 12, 2000 letter from the Royal Scottish Academy of Music and Drama informing the beneficiary that she had been awarded a maintenance scholarship, which included the January and April 2001 academic periods, and a July 2, 2001 letter from the same institution informing the beneficiary that she had satisfied the requirements for a master's of music degree in advanced opera. The evidence indicates that the beneficiary was a full-time student until approximately July 2001. A student in training for a vocation or occupation is not engaged in the vocation or occupation. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The evidence does not establish that the beneficiary was continuously engaged in a religious occupation for two full years preceding the filing of the 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.