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U.S. Citizenship
and Immigration
Services

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[redacted]

JAN 25 2005

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:
SRC 02 115 52349

IN RE: Petitioner:
Beneficiary: [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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter 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 bible teacher and choir conductor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a bible teacher and choir conductor immediately preceding the filing date of the petition.

We note that, simultaneously with the appeal, the petitioner filed a separate motion to reconsider with the Texas Service Center. By filing the appeal, the petitioner placed the matter under the AAO's jurisdiction. Because the appeal supersedes the motion, that motion is redundant and is hereby dismissed. If the petitioner desired full review by both the director and the AAO, the proper course of action would have been to file only the motion, and then, if that motion did not result in approval of the petition, the petitioner could have appealed the director's second decision to the AAO.

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 February 28, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a bible teacher and choir conductor throughout the two years immediately prior to that date. The beneficiary did not enter the

United States until September 4, 2000, and therefore some evidence of qualifying employment must come from abroad.

Rev. pastor of the petitioning church, offers the following information about the beneficiary's past experience:

1. From Sep 11, 2000 to present, a bible teacher and chorus conductor for the petitioning church by teaching bible and conducting, directing or managing church chorus.
2. From May 14, 1996 through Aug 20, 2000, a bible teacher and choir [sic] at Sung Moon Baptist Church, Seoul Korea.
3. Completed bible teacher training from April 20, 1994 through April 10, 1996 for 2 years by studying disciple training one to one and St. Peter [sic] studied about 440 hours offered by Sung Moon Baptist Church, Seoul Korea.
4. Currently [the beneficiary] is also studying theology in the Luther Rice Seminary.

Number 4 on the above list has been obscured with correction fluid, leaving only the first three items readily legible. In a separate declaration, Rev states that, since September 11, 2000, the beneficiary has worked 36 hours per week, mostly teaching or preparing for bible classes.

The director requested additional evidence, including copies of the beneficiary's tax returns and Form W-2 Wage and Tax Statements. The director also asked the petitioner to state the number of people who typically attend the church's "activities or functions," as well as the number of paid employees at the church.

In response, the petitioner indicated that the pastor and the beneficiary are the church's only salaried employees, and that the church has 20 "non-salarie[d] employees." The petitioner indicated that the church has 119 members, with an average of 98 people "attending church activities," indicating that one out of six church members (and one out of five regular attendees) works for the church. Asked whether the beneficiary had ever worked outside the church in the United States, the petitioner indicated that the beneficiary had never done so. A list of workers indicates that another individual is the (unpaid) choir conductor; the list identifies the beneficiary as "choir," meaning, presumably, a member of the choir rather than its conductor.

The petitioner submits copies of canceled checks, showing that the petitioner has paid the beneficiary $1,500 per month since December 2001. There is no evidence to show how the beneficiary supported himself during his first 15 months in the United States. The petitioner submits a copy of the beneficiary's 2001 federal income tax return, indicating that the beneficiary's only reported income was $1,500, reported not as salary or wages, but as "other income" from the petitioning church. This corresponds to the December 2001 payment from the petitioner. At the end of the tax return, the line "Your Occupation" identifies the beneficiary as a "clerk." Also on the 2001 tax returns (both state and federal), the beneficiary identified himself as "single" with no dependents. The beneficiary's 2002 income tax return shows $18,000 in "other income" from the petitioning church, and identifies him as a "Church Employee." The return also indicates that the beneficiary has a spouse and two children. According to the I-360 petition form, the beneficiary's children were born in 1983 and 1987. The reference to the beneficiary as "single" on the 2001 federal tax return amounts, on its face, to a false statement to an agency of the United States government.

The director denied the petition, stating that the petitioner has not established that the beneficiary worked continuously in a religious occupation throughout the two-year qualifying period. The director noted that the beneficiary received no compensation for 15 months; that the beneficiary called himself a "clerk" on his 2001 tax return; and that theological studies do not amount to qualifying work experience.

On appeal, counsel states "the only issue which is [the] basis of the denial of the petition is whether the time [the beneficiary] spent in B-2 visitor status . . . breaks the two years requirement." Counsel states:

> The service center took approximately nine months and twenty two days to process [the] R-1 petition which was filed on February 6, 2001. The beneficiary took about five month[s] and two days to submit [the] R-1 petition from the date of entry to [the] U.S.
>
> The petitioner feel[s] that it is unfair for the service to take the process for over nine months and twenty two days and then later state that the beneficiary obtained R-1 status approximately fourteen months after entering the U.S. which breaks the required recent two years experience.

The director is clearly not responsible for the petitioner's delay of nearly six months in filing the nonimmigrant petition on the beneficiary's behalf. The petitioner claims that the beneficiary entered the United States specifically for the purpose of working for the petitioner, yet the petitioner made no haste to seek a visa that would allow the beneficiary to work legally.

More importantly, while the director had acknowledged that the beneficiary was a B-2 nonimmigrant visitor for much of his time in the United States, it is highly inaccurate to state that the director denied the petition *because* the beneficiary was a B-2 visitor during that time. The director *mentioned* the beneficiary's B-2 status only once, in a passage near the end of the decision, *after* an analysis of the record that set forth the finding of ineligibility.

Rev. [redacted] of Sung Moon Baptist Church, Seoul, Korea, indicates that the Korean church paid the beneficiary's wages "for missionary work" at the petitioning church until November 28, 2001. There is no financial documentation to show that the claimed funds ever actually changed hands. The petitioner submits a "confirmation of personal income tax matters in Korea" from a Seoul accounting firm, indicating the beneficiary's income in 1998, 1999, and 2000. No 2001 income is mentioned. The beneficiary's reported income for 2000 is only 70% of his income from 1999, which is roughly what would be expected if the beneficiary ceased receiving income around September 2000. The petitioner, on appeal, makes the completely new claim that the beneficiary received compensation from Korea during late 2000 and most of 2001, but there is no evidence that he reported this income to tax authorities in the United States or in Korea.

Regarding the beneficiary's 2001 tax return, which refers to the beneficiary as a "clerk," [redacted] the accountant who prepared the return, states in a new letter that the term "clerk" was used in error, and that "[t]he taxpayer's actual occupation is Religious Worker (Bible Teacher)." Notwithstanding this error, the beneficiary signed the form without correcting the error, and without correcting his incorrect designation as "single" (which is a material fact affecting the amount of tax paid).

We find that the petitioner has not credibly demonstrated that the beneficiary was compensated for his religious work between September 2000 and November 2001. Moreover, beyond the specific factors cited by the director, we note several observations relating to schedules provided by the petitioner. These schedules indicate that the beneficiary devotes 29 hours per week to his teaching duties, and five hours to choir practice and performance, in addition to two hours providing transportation to elderly members of the congregation, for a total of 36 hours per week.

We first examine the beneficiary's choir duties. Notwithstanding the petitioner's initial claim that the beneficiary is the choir conductor, the petitioner has since identified the beneficiary as merely a member of the choir, with another individual identified as the choir conductor.[1] The record provides no reason to believe that the petitioner's 15-member choir requires two conductors. All of the other choir members, including the conductor, are listed as non-salaried volunteers, which is typical for a church choir. The record does not explain why the petitioner would pay only the beneficiary to sing in the choir, with no other member receiving remuneration. Therefore, we conclude that the beneficiary is not paid to be a member of the choir. The remaining 31 hours on the beneficiary's schedule do not amount to full-time work. Part-time employment is not continuous religious work. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Even this 31-hour total may be inflated, because it includes two hours per week providing transportation to elderly parishioners. We are, thus, left with 29 hours a week (including eight hours preparing teaching materials) said to be devoted to teaching duties. Even if all of the petitioner's claims are true, this is not continuous (full-time) religious work.

Regarding the beneficiary's teaching duties, the beneficiary is said to have taught "Bible Study for Adult Class" every weekday as follows:

Mondays	3:00 – 6:00 p.m.
Tuesdays	2:00 – 6:00 p.m.
Wednesdays	4:00 – 7:00 p.m.
Thursdays	3:00 – 7:00 p.m.
Fridays	10:00 a.m. – 12:00 p.m.

Rev. [redacted] states that the beneficiary taught the following weekday adult bible study classes from May 14, 1996 to August 20, 2000:

Mondays	7:00 – 9:00 p.m.
Tuesdays	10:00 a.m. – 12:00 p.m.
Thursdays	2:00 – 5:00 p.m.
Fridays	9:00 a.m. – 12:00 p.m.

The petitioner indicates that the beneficiary's Monday, Wednesday, and Friday classes are "Discipleship Training," and the Tuesday and Thursday classes are "Church Staff Training." According to the petitioner, the "Discipleship Training" course "is offered to selective [sic] church members who are capable to volunteer serving the gospel." The "Church Staff Training" course "provides [for students] to grow and expand their spirituality to assist the pastor for church development and to spread the Word of God to communities." The petitioner does not indicate how many of the church's members attend these classes.

The petitioner has indicated that its entire congregation consists of less than 120 people, many of whom are presumably employed. Considering that most employed adults are at work in the late morning and early afternoon, we can justifiably assume that many members of the congregation are unable to attend the beneficiary's classes. The class sizes are further reduced by the fact that the "church staff" consists, at most,

[1] If it is the petitioner's contention that the beneficiary is, at present, a member of the choir, and that the petitioner intends *in the future* to employ the beneficiary as the choir conductor, it would still remain that the beneficiary was not the choir conductor during the two-year qualifying period, and therefore the beneficiary would lack the required experience in that position.

of 20 unpaid workers, most of whom are identified only as choir members; and the "Discipleship Training" is offered only to "select[ed] church members," further implying limited class size.

While it is reasonable for staff training to take place during typical business hours, in this case the "church staff" consists of unpaid volunteers who, presumably, must have some form of support outside of church work. The petitioner's budget includes no salaries except for the petitioner and the pastor, and no provision for meeting the basic needs of 20 unpaid staffers.

This evidence, on its face, does not readily demonstrate that the petitioner's congregation contains enough adults with free time to attend daily morning or afternoon bible classes to justify the indefinite employment of a full-time, year-round bible teacher. The petitioner claims that the beneficiary devotes eight hours a week to "preparation of materials" for these classes. The record does not contain examples of these materials, nor any clear, credible explanation of how it takes eight hours a week to prepare for what cannot be very large classes.

Clearly the petitioner has paid the beneficiary for services during the last three months of the qualifying period, and the beneficiary is involved at the petitioning church to some extent, but the information and evidence provided by the petitioner does not lead us to conclude that the beneficiary has been, or will be, employed continuously (i.e., full-time) as a bible instructor. The record, on its face, points to part-time work, and gaps and inconsistencies in the record raise additional questions.

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.