**U.S. Department of Homeland Security**
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**U.S. Citizenship and Immigration Services**

[redacted]

JAN 31 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 266 53307

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:

SELF-REPRESENTED

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

for Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION**: The employment-based immigrant visa petition was denied by the Director, California 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), in order to classify her as a Music Minister.

The director denied the petition on January 16, 2004 after determining that the petitioner failed to establish that the beneficiary had been continuously performing full-time work as a Music Minister for the two-year period immediately preceding the filing of the petition. The director further determined that the petitioner failed to establish that the beneficiary's proffered position is related to a traditional religious function and, therefore, could not be considered as a religious occupation.

The petitioner files a timely appeal.

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) 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-year period 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."

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 September 24, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a Music Minister for the two-year period immediately prior to the filing of the petition; September 24, 2001 to September 24, 2003. The Form I-360 indicates that the beneficiary entered the United States on January 25, 2003 as a B1/B2 nonimmigrant with permission to remain in the United States until December 30, 2003. The record contains a copy of the beneficiary's Form I-797A, Approval Notice, documenting the beneficiary's approval as an R-1 nonimmigrant with permission to remain in the United States From November 1, 2003 until October 31, 2006. As the beneficiary was outside of the United States for the majority of the two-year period, her experience in the United States cannot suffice to meet the experience and denominational membership requirements.

In a letter submitted with the original petition [redacted] District Superintendent of the petitioning church, states that "there is an arrangement with the Evangelical Methodist Church in the Philippines for [the beneficiary] to work as the Music Minister of the [petitioning church] . . . The intended dates of employment are from November 1, 2003 to October 21, 2006."

In a second letter, dated August 15, 2003, [redacted] Chair, Staff – Pastor – Parish Committee, states that the beneficiary "has been hired as a Music Minister at [the petitioning church] . . . Her compensation package is $22,400 per annum which includes cash salary, housing equivalent and health insurance."

On September 30, 2003, the director instructed the petitioner to submit detailed information about the beneficiary's claimed work throughout the two years preceding the filing date, as well as "evidence to show how the beneficiary supported [herself] (and family members, if any) during the two-year period or what other activity the beneficiary was involved in that would show support."

In response to the director's request for evidence, Rev [redacted] of the petitioning church submitted a letter stating that he is "providing evidences [sic] that the [beneficiary] . . . was employed and volunteered as a Deaconess/Teacher/Music Director/Organist prior to and beginning September 24, 2001 and ending September 24, 2003." Rev [redacted] hen states:

> [The beneficiary] took a Leave of Absence effective January 25, 2003. The Leave of Absence is still a part of the appointment of a Deaconess in the Methodist Church and its affiliated and autonomous churches. She came over to the United States and volunteered at Emmanuel Methodist Church in Union City, New Jersey from March to August 2003 . . . .

> [The beneficiary] also volunteered as a Choir Director to Valley Faith UMC the month of September. Her service record includes both her employment and voluntary work as Deaconess being petitioned as a Special Immigrant Religious Worker.
>
> I also provide you with copies of the taxes filed, vouchers and remuneration/love gifts given for the [beneficiary]. Copies of the liturgies used by churches where she volunteered are also attached.

The petitioner submits a copy of one check purportedly issued to the beneficiary as a "remuneration/love gift" in the amount of $1,1091.66 as payment for her "voluntary work . . . in helping the church choir for the period of the month of September." We note that there is no evidence that the beneficiary actually received or cashed this check. Regardless, we do not consider this check as evidence of the beneficiary's employment with the petitioner as Rev clearly states the beneficiary's work was "voluntary."

It must also be noted that Rev does not explain how the beneficiary can be considered to have worked continuously, during the entire two-year period prior to filing when Rev admits that the beneficiary was not only a "volunteer," but also took an eight month leave of absence. Moreover, as there is no evidence that the duties of a Choir Director are the same duties required of the beneficiary as a Music Minister, the record does not reflect that the beneficiary's volunteer work for the petitioner was in the same position being offered by the petitioner.

As it relates to the beneficiary's work prior to coming to the United States, the petitioner submits a letter from Chairman of the Evangelical Methodist Church in the Philippines. In his letter, dated November 5, 2003, Bishop Domingo states:

> [The beneficiary] graduated with a Bachelor of Music Degree at FEBIAS College of Bible . . . Since graduation [the beneficiary has] work[ed] as church choir directress in several congregations, besides being the head of the denomination's . . . Sacred Music Department for some years.
>
> In 1992 because of the split in the . . . church, [the beneficiary] joined the IRM (IEMELIF REFORM MOVEMENT) and was assigned as choir directress of the Guyong IRM Church, one of the biggest church[s] in Bulacan.

In a second, undated letter, Bishop states that the beneficiary worked "as a Deaconess from 1973 – 1988 and Directress of Music from 1989-1996."

Bishop does not indicate whether the beneficiary was employed on a full-time basis or whether she received a salary as part of her duties. More importantly, Bishop does not discuss any of the beneficiary's work, if any, during time period necessary to establish eligibility; the period covering September 24, 2001 to September 24, 2003.

In a letter written by Rev District Superintendent of the Beulah Land IEMELIF Center, Rev states that the beneficiary:

> [H]ad been appointed and worked as principal of Psalms Academy from March 2001 to January 2003 with a monthly salary of P20,000. This appointment was an extension

ministry of a Deaconess. As a principal she was in-charge of supervising the whole school and its daily activities. She also taught courses in Bible and Music.

In a second letter dated November 6, 2003, Rev. indicates the beneficiary's "participation" in the following ministry: Member of the Deaconess Association, Program Coordinator, District Children's Group, Young Married Couple, and District Choral.

As evidence to support Re tatement, the record contains the beneficiary's July 1999 and October 2002 "Certificate of Compensation Payment/Tax Withheld," which indicates the Psalms Academy paid the beneficiary a basic salary of 240,000 pesos. We note, however, that this evidence does not cover the entire period Rev claims to have employed the beneficiary. Regardless, we note that the beneficiary's employment as the Psalms Academy was as a Principal, not as a Music Minister.

In a letter submitted by Rev Resident Pastor of the Church of Rev states that the beneficiary "was employed as Music Directress and handle[d] choir practices during Tuesday, Thursdays and Saturdays of each week. This appointment was valid from March 2001 to January 2003." Rev indicates that the beneficiary also "acted as organist during Sundays on a Worship Service with a monthly salary of P3,000.00 and acted as a Wedding Coordinator with additional love gift."

The record contains what is purported to be a "cash voucher" indicating the beneficiary's receipt of $3000 pesos for the months of September 2002, October 2002, November 2002, and December 2002. The vouchers, however, do not indicate the party responsible for paying the beneficiary this "salary." Even if we were to assume that the payment was from Rev for the beneficiary's services, such payments account for only four months out of the claimed 22-month period Rev. claims to have employed the beneficiary. Though both Rev. and Rev claim the beneficiary received payment for her work, the record contains no documentary evidence to support these claims. 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).

Further, though Rev and Rev discuss the beneficiary's work during a portion of the relevant time period, there is no evidence that the duties performed by the beneficiary as a Principal or as Music Directress are similar or related in any way to her duties as Music Minister in the petitioner's church. Finally, as both Re and Rev claim the beneficiary was performing her duties from March 2001 to January 2003, the letters fail to establish that the beneficiary was working full-time in either position.

The petitioner also submits the beneficiary's Philippine tax returns for the years 1999 and 2001. Though the tax returns show the beneficiary earned 240,000 pesos and 180,000 pesos, respectively, the tax returns do not establish where such income came from.

As it relates to the beneficiary's employment in the United States, after her entry in January 2003, the petitioner submits a letter from of the Livingston Korean United Methodist Church in Livingston, New Jersey who states that the beneficiary "was a volunteer church organist . . . from March 2003 to June 2003 . . . [and received] a love gift in the amount of $150.00 per month."

A second letter was submitted by Rev of the Emanuel United Methodist Church in Union City, New Jersey who states that the beneficiary "volunteered as the [o]rganist . . . from . . . July 1, 2003, through August 2003."

The record contains no evidence to support Pastor Kim's claim that the beneficiary received "a love gift in the amount of $150.00 per month" from March 2003 to June 2003. Further, as the beneficiary was clearly working as a volunteer during the time periods referred to b and Rev her work cannot be considered full-time employment. Regardless, the work performed by the beneficiary was as a Church Organist, not as a Music Minister.

The petitioner also submitted an affidavit from who states that she "provided free board and lodging" to the beneficiary from January 25, 2003 through August 2003. We find such evidence is of little relevance to establish that the beneficiary was a salaried employee at any church as a Music Minister. Further, the affidavit cannot be used as evidence that the beneficiary did not undertake any outside employment, as there is no explanation for how the beneficiary supported herself in the United States from September 2003 until November 2003, when the petitioner claims she began her employment.

In his denial, the director noted that the beneficiary's position as a "volunteer minister" involves no compensation from the petitioner. As the beneficiary's duties were performed on a volunteer basis, the director concluded that the beneficiary did not have the requisite two-years of continuous experience in the position.

On appeal, the petitioner does not refute the fact that the beneficiary worked as a volunteer until the time she received her R-1 nonimmigrant status in November 2003, at which time she began working as a Music Minister. Instead, on appeal, the petitioner claims:

> The beneficiary is a "Deaconess and has responded to the call of the Office of Deaconess with her willingness to do ministry in the different involvement in the church and the community in fulfilling the mission of the people of God . . . That is why the beneficiary served as Program Coordinator, District Children's Group Coordinator, Young Married Couple's Coordinator, District Choral Counsel because these were the needs in the ministry of the church.

Based upon the petitioner's statement, it appears the petitioner is attempting to change the beneficiary's proffered position from that of a Music Minister to that of a Deaconess. The petitioner is prohibited from making such a material change in the proffered position on appeal. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Nevertheless, we find such a change, in this instance, to be inconsequential. Just as the petitioner has failed to submit any documentation to establish the beneficiary has the requisite experience and had been employed as a "Music Minister" for at least the two years prior to filing the petition, the petitioner has also not submitted any evidence to show that the beneficiary had been performing any of the duties of a "Deaconess" as stated on appeal.

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. Rpt. 101-723, at 75 (Sept. 19, 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 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. Com. 1963) and *Matter of Sinha,* 10 I&N Dec. 758 (Reg. Com 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 salaried. To hold otherwise would be contrary to the intent of Congress.

The record demonstrates that during the requisite two-year period, the beneficiary was working as a volunteer from at least March 2003 until November 2003. Further, though the petitioner claims the beneficiary received remuneration and "love gifts" documenting her employment, there is no such evidence in the record.

Moreover, none of the letters submitted in support of the petition demonstrate that the beneficiary was working as a Music Minister during the requisite two-year period. Pursuant to the plain language of the statute and regulation, if the beneficiary seeks to enter the United States to work as Music Minister, then she must have at least two years of experience *as a Music Minister* immediately prior to the petitioner's filing date.

For all of these reasons, the petitioner is unable to show that the beneficiary had the requisite two years continuous experience as a Music Minister immediately preceding the filing date of the petition.

The remaining issue is whether the beneficiary's position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definition:

> *Religious occupation* means 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, fundraisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position it is offering qualifies as a religious occupation as defined in the regulation. 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 reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature

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.

In this instance, the petitioner offered nothing to show that the religious denomination considers the beneficiary's duties to be a traditional religious function, routinely assigned to a full-time paid employee, rather than tasks usually delegated to a part-time worker or a volunteer from the congregation. Instead, the record reflects that the beneficiary worked as an unpaid volunteer. The fact that the petitioner was able to provide services and operate as a church without the beneficiary serving in a full-time, paid capacity, does not support the petitioner's assertion that the beneficiary's position is considered a traditional religious function by the petitioner's denomination.

The remaining issue, beyond the decision of the district director, is whether the petitioner has established its ability to pay the beneficiary the proffered wage.

In an attempt to demonstrate it has the financial resources to pay the beneficiary's salary, the petitioner submits a copy of its proposed budget for 2003, and two bank statements, dated August 2003 and December 31, 2002, respectively.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. *Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.*

[Emphasis added].

Though the petitioner is free to submit other kinds of documentation, such submissions must only be *in addition to*, rather than *in place of*, the type of documentation required by regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

For this additional reason, the petition may not be approved.

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.