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U.S. Citizenship  
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Services

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FEB 10 2005

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:  
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IN RE: Petitioner: [REDACTED]  
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.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

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 master of ceremonies/head sacristan. The director determined that the petitioner had not established that the position qualifies as a religious occupation, or that the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition. The AAO affirmed the director's decision and dismissed the 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--

\* \* \*

(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 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)(2) defines "religious occupation" as 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, fund raisers, or persons solely involved in the solicitation of donations.

Citizenship and Immigration Services (CIS) 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, not primarily involved with secular administrative or custodial functions, 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).

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 May 2, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a master of ceremonies/head sacristan throughout the two years immediately prior to that date. If the beneficiary’s work during that time did not qualify as a religious occupation, then his experience cannot count toward a finding of eligibility. Very significant fluctuations in the beneficiary’s compensation between 1998 and 2001 (of up to 40 percent per year, with his most recent salary in 2001 at \$62,036.25) naturally raise questions about whether the beneficiary performed essentially the same duties throughout that period.

The AAO, in its initial appellate decision, had determined that much of the beneficiary’s work is administrative or custodial, and that the petitioner had failed to present a consistent description that showed the beneficiary’s duties to be predominantly religious in nature. Counsel had previously argued “[t]hat ‘administrative’ work is all liturgically related,” because it involved such factors as “coordination of maintenance of and around church” and “maintenance of vestments.” Janitorial work also involves maintenance of the church and its surrounding grounds, yet 8 C.F.R. § 204.5(m)(2) specifically excludes “janitors” and “maintenance workers” from the definition of “religious occupation.” The duties of a sacristan (also known as a sexton<sup>1</sup>) consist largely of maintenance functions.

We note that the beneficiary identified his occupation as “custodian” on his 2000 income tax return. On his 1999 tax return, the beneficiary described his “principal business or profession” as “office cleaning.” On his 1998 tax return, his “principle business or profession” was “cleaning.” In each of those years, according to tax documents in the record, the beneficiary’s chief or sole source of income was the petitioning church. None of the tax returns identifies a third-party tax preparer or otherwise indicates that anyone other than the beneficiary himself prepared the tax returns. One tax return refers to “cleaning supplies,” which reinforces the accuracy of the assertion that the beneficiary was engaged in “cleaning.” We are obliged to conclude either that the beneficiary knowingly made false statements on his tax returns, or that his principal duties in 1998, 1999 and 2000 were more akin to those of a janitor or maintenance worker than those of a liturgical worker. The fact that the beneficiary, during the 1999-2001 qualifying period, repeatedly referred to himself under penalty of perjury as a cleaner or custodian, cannot be overcome by a simple written explanation. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

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 previous decision of the AAO will be affirmed, and the petition will be denied.

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<sup>1</sup> The petitioner’s webpage refers to the beneficiary as its sexton. See [http://www.stregis.org/info/staff\\_directory.htm](http://www.stregis.org/info/staff_directory.htm), accessed on January 27, 2005.



**ORDER:** The AAO's decision of August 7, 2003 is affirmed. The petition is denied.