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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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MAR 21 2011

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition on December 16, 2008. The petitioner filed a timely appeal on January 15, 2009. The director issued a new decision on April 18, 2009 and certified the new decision to the Administrative Appeals Office (AAO). The AAO will dismiss the appeal. The director's certified decision will be withdrawn, as the director had no jurisdiction to issue a new decision in this case after the appeal had been filed.

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 praise leader/cantor. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

Counsel submits a brief in support of the appeal and on certification in which he asserts that the petitioner has established that the duties of the proffered position have religious significance and embody the tenets of its religious denomination. The petitioner submits additional documentation in support of the appeal and on certification.

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 September 30, 2012, 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 September 30, 2012, 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 issue raised by the director is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines “religious occupation” as an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

In its April 10, 2008 letter submitted in support of the petition, the petitioner stated that in the proffered position:

[The beneficiary] will create and organize an integral secular music community within the church that is consistent with the Presbyterian faith. She will provide religious teachings, instructions and spiritual guidance to all church members and their families that are consistent with the teachings of the Bible and the church’s statement of faith.

The petitioner outlined the duties of the position as:

1. Direct the praise worship team according to music and rituals with religious significance. . . .
2. Lead praise songs during worship times (lead the congregation in prayer) with prescribed songs for worship.
3. Prepare a music program for all Sunday services as well as major holiday services. Organize and select the music for religious services and special performances.
4. Coordinate selection of hymns and choral music for church services in accordance with Pastor’s theological message and weekly worship themes.

5. Encourage and organize congregational participation for vocal and instrumental solos and ensembles.
6. Direct choral ensembles (including practice sessions).
7. Lead the congregation in both modern and traditional church music including socially relevant secular music of various styles.
8. Submit all music selections/information to the Senior Pastor in a timely manner for inclusion in the Sunday worship program/bulletin.
9. Train choir members in choral techniques, appreciation of sacred music, and leadership and participation in worship.
10. Assist Senior Pastor with worship and prayer during home visits to congregation members, providing spiritual comfort to those in need.
11. Prepare Bible study lessons to promote the spiritual growth and transformation of the church members through enjoyable learning experiences, which introduce and expand their understanding of God's Word and the Love of Jesus Christ.
12. Lead students through prayer, songs, bible stories, religious discussions, and memory verses in a timely manner.
13. Develop and coordinate religious lessons with the Senior Pastor to present a religious education that engages the church members and nurtures them in their faith development.
14. Provide spiritual guidance and leadership to meet the religious needs of students and other church members.
15. Set a positive example for others by living life consistent with the teachings of the Bible, being full involved in the life and ministry of the church.
16. Mentor church members before and after Bible study sessions.

The petitioner stated that "the person performing these religious duties must be adequately trained and experienced in the Presbyterian Church religious principles and doctrines, and church music that accompany worship services." The petitioner further stated:

In addition to the weekly worship services held at the church, the . . . Church Choir/Praise Team also gives special performances in and outside of the Church. Special performances held at the Church include, but is not limited to Special

Worship Services held in February celebrating the Chinese New Year, the Easter Praise Worship Service, [the petitioner's] Annual Ceremony, and the Christmas Worship Service.

Special Performances held in the community include, but is not limited to attending and performing at the annual Korean Christian Conference and the Annual Children's Conference.

The petitioner provided a work schedule for the beneficiary which reflects that she worked seven days and 48 hours per week. In an August 13, 2008 request for evidence (RFE), the director instructed the petitioner to:

Provide a **detailed description** of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

In his September 16, 2008 letter accompanying the petitioner's response, counsel stated:

The Petitioner submits that the Beneficiary's services as a Praise Leader/Cantor are necessary to the congregation and provide an essential part of our worship services through the use of music.

The actual past and ongoing practice of our organization is the best evidence to confirm that the services of the Beneficiary are necessary. For many years, the congregation has had a minister or full-time staff member performing the services of a Praise Leader/Cantor. These services have been regularly performed within our organization since 1998.

Although counsel writes in the plural first person, the list of church members does not include counsel's name and no other documentation in the record reflects that he is a member of the petitioning organization. Nothing in the record supports counsel's assertion regarding any previous incumbent in the proffered position. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In denying the petition, the director concluded that the beneficiary had failed to establish that the duties of the position require specific religious training. We note that the regulation at 8 C.F.R. § 204.5(m)(5) does not require specific religious training in order for this position to qualify as a

religious occupation and we withdraw the director's statement. The director further determined that while the position incorporates some duties that are of a religious nature, the petitioner failed to provide a daily and weekly work schedule for the beneficiary and failed to indicate the number of hours per week that she would spend performing each of the job duties. We note that the information requested was submitted with the petition and again in response to the RFE. The director also determined that the petitioner had failed to establish that the duties of the proffered position constitute a religious occupation. On appeal, counsel asserts:

[The petitioner] has not only established that the position of Praise Leader/Cantor requires, and [the beneficiary] possesses, job-related training beyond "facilitating music at religious services[.]" but also established that the denomination traditionally considers the position of Praise Leader/Cantor to be a full-time paid position, rather than a part-time endeavor performed by volunteers or for nominal pay.

On appeal, counsel cites to several unpublished AAO decisions in support of his claims. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

The petitioner submits on appeal a partial copy of the "Book of Order: The Constitution of the Presbyterian Church (U.S.A.)" for 2007/2009 that discusses the importance of music in the Presbyterian Church. However, although counsel asserts that the position of cantor requires the individual "to profess" to certain statements including a belief in Jesus Christ and a "sincere reception and adoption of the essential [tenets] of the Reformed faith as expressed in the confessions of the Presbyterian Church," the "Book of Order" does not indicate that a cantor is one of the commissioned church officers or certified persons required to "profess" to these statements. In fact, the position of cantor or praise leader is not identified in the "Book of Order." The petitioner submitted no documentation from the Presbyterian Church establishing that it recognizes a cantor or praise leader as a religious occupation, as required by the regulation at 8 C.F.R. § 204.5(m)(5)(A). The petitioner submitted no documentation that the position exists in other Presbyterian churches or that it existed in its own organization prior to the position being assumed by the beneficiary.

Accordingly, the petitioner has failed to establish that the proffered position is a religious occupation within the meaning of the regulation.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

The petitioner has failed to establish that the proffered position qualifies as that of a religious occupation. Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

Further, the petitioner has failed to meet the requirements of the regulation at 8 C.F.R. § 204.5(m)(7), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

Finally, the petitioner has not successfully completed an inspection or compliance review. The regulation at 8 C.F.R. § 204.5(m)(12), provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

On May 23, 2008, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying the petitioner's claims made in the petition. The IO reported that he was unable to verify that the beneficiary worked more than 20 hours per week in the proffered position and was unable to verify her exact position in the church. Accordingly, the onsite inspection of the petitioner's premises did not establish that the beneficiary seeks to enter the United States to work full-time (at least 35 hours per week) as a religious worker, as required by the regulation at 8 C.F.R. § 204.5(m)(2). If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition. 8 C.F.R. § 204.5(m)(12). As the petitioner did not satisfactorily complete the pre-approval inspection, this petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.