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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

**PUBLIC COPY**



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DATE:

Office: CALIFORNIA SERVICE CENTER

FILE:



**MAY 03 2011**

IN RE:

Petitioner:



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)

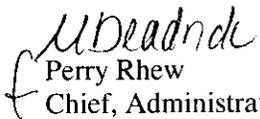
ON BEHALF OF PETITIONER:



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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition and it is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

Both the prospective employer, Word of Life Ministries, and the alien signed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The Form I-360 reflects the alien's address in both Parts 1 and 3. The only Form G-28, Notice of Appeal or Motion, in the record of proceeding is on behalf of the alien, and has been signed by the alien and not by the prospective employer. The Form I-290B, Notice of Appeal or Motion, is signed by counsel for the alien. The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Accordingly, the alien and not his prospective employer will be considered the petitioner.

The petitioner seeks classification 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 youth and children's music director. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation and that his prospective employer is a bona fide nonprofit religious organization.

On appeal, counsel asserts that the director "is incorrect in stating that there is a lack of record evidence" to support the petitioner's claim that the position is a religious occupation and relates to a traditional religious function. Counsel further asserts that the record contains documentation of the prospective employer's bona fides as a nonprofit religious organization. Counsel submits a brief and copies of previously submitted documentation in support of 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 –

(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 first issue presented on appeal 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.

The position description for the youth and children’s music director provides:

The primary religious duties of the Youth and Children’s Music Director are:

- Developing and promoting musical programs and activities related to major holidays such as Christmas, Easter/Resurrection Day, New Year, Youth Events such as “Seizing the final victory”, “Global Youth Rally”, etc.
- Administering the musical programs of the church to teenagers, children and other groups, including various types of troubled individuals
- Arranging musical portion of the weekly youth worship services in consultation with the Youth Pastor

- Arranging musical portion of the weekly children's worship services in consultation with the Children's Pastor
- Chanting or singing religious texts during worship services
- Training and leading children and teenagers in musical responses during worship services
- Creating variations of traditional music or compose music for worship services
- Train up children and teenagers in leading worship, vocally and instrumentally
- Preparation and rehearsal for children's play (drama)
- Responsible for the selection of the play

Theological training and education is [sic] the primary requisite for the position of Youth and Children's Music Director because in our organization, music is one of the many tools used to educate, inspire and otherwise bring the Lord into the lives of our congregants. Our Music Directors must have prescribed religious training through Global Church Fellowship in order to convey our religious philosophy and practices to our members.

Compensation: \$1,400 per month, plus room and board  
Working hours: approx. 40 hours per week

The petitioner provided a weekly work schedule that included "service" from 10am to 1pm on Sunday; youth service, including preparation and follow up on Wednesday and Friday; and the following activities from Monday through Friday: teaching for 10 hours, selection and rehearsals for children's plays for 4 hours, planning and rehearsal for youth plays and events for 5 hours, and meetings with the youth pastor, general staff, youth staff and volunteers for 5 hours.

In a July 24, 2009 request for evidence (RFE), the director instructed the petitioner to:

Provide evidence that the duties [of the proffered position] primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination. Provide evidence that the duties are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

In response, the petitioner submitted a September 2, 2009 letter from his prospective employer signed by [REDACTED] who also signed the petition on behalf of the prospective employer. [REDACTED] stated that the proffered position is "mostly certainly considered to be a Traditional Religious Occupation for our Ministry." [REDACTED] further explained:

In our organization music is one of the many tools used to educate, inspire and otherwise bring the Lord into the lives of our congregants. Our music directors

must have religious training through [REDACTED] in order to convey our religious philosophy and practices to our members.

In a December 21, 2006 letter that [REDACTED] submitted in support of its R-1 nonimmigrant religious worker petition on behalf of the petitioner, [REDACTED] stated;

An essential aspect of our worship service is music. The musical programs and activities provided by [REDACTED] bring members together to educate them in the word of the Holy Bible. [REDACTED] routinely begins each worship service with music. The purpose of beginning each service with music is to prepare the congregation to acknowledge the presence of the Lord. The lyrics contained in our music are either direct quotes from the Scriptures or adaptations from the Scriptures.

In a letter on [REDACTED] letterhead, dated March 20, 2009, [REDACTED] is identified as the president and founder of the organization. [REDACTED]

The director determined that the petitioner had failed to submit supporting documentation to establish that the position is a traditional religious occupation within the denomination, stating:

The record lacks any documentation establishing that the position is recognized as a religious occupation related to a traditional function in this denomination. The petitioner did not submit By-Laws, letters from authorized officials of the religious organization in the United States, or other documentary evidence indicating that the duties of this position are directly related to the religious creed of the denomination and that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, salaried occupation within the denomination.

On appeal, counsel states that the petitioner has submitted documentation from the "top 'authorized' religious official" in the petitioner's denomination stating that the position is a traditional religious function within the denomination.

The AAO finds that the petitioner has submitted sufficient documentation to establish that the proffered position is recognized as a religious occupation within the denomination, primarily relates to a traditional religious function, and primarily relates to, and clearly involves, inculcating or carrying out the religious creed and beliefs of the denomination. The AAO therefore withdraws this determination by the director.

The second issue whether the petitioner has established that his prospective employer is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

*Tax-exempt organization* means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the IRC of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

*Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:
  - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
  - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
  - (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
  - (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

With the petition, the petitioner submitted a July 15, 1995 letter from the IRS informing the Word of Life Ministries that it was recognized as a tax-exempt organization under section 501(c)(3) as an organization described in section 170(b)(1)(A)(i) of the IRC. The address listed on the letter is [REDACTED]

In her RFE, the director questioned the petitioner about the location of his prospective employer as the address listed on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, differed from the address on the IRS letter.

In response, counsel stated that the address on the Form I-360 is that of the petitioner and that the prospective employer is located at [REDACTED]. The petitioner further submitted documentation from the State of New York regarding the incorporation of [REDACTED] in that state and documentation indicating that the organization applied to the State of Florida for permission to conduct business in the state as a foreign corporation. The office address for its registered agent is identified as [REDACTED]. The record also contains a notice from the IRS that is addressed to [REDACTED] at [REDACTED]. The Employment Identification Number on the July 25, 1995 exemption letter matches the number listed on the notice.

Accordingly, the AAO finds that the petitioner has submitted sufficient documentation to establish that his prospective employer qualifies as a bona fide non-profit religious organization, and we withdraw the director's determination.

Nonetheless, the petition may not be approved as the record now stands. The petitioner has not established that the beneficiary is qualified for the proffered position. The regulation at 8 C.F.R. § 204.5(m)(5) defines religious worker as "an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister."

The position description provides that theological training and education are required for the position of music director, and that the prospective employer's music directors "must have prescribed religious training through [REDACTED] in order to convey our religious philosophy and practices to our members." [REDACTED] repeats this requirement in his letter of September 2, 2009, and while he stated that the petitioner "has certainly had such training," no evidence of such training is included in the record.

Accordingly, the matter is remanded to the director to address whether the petitioner has established that he is qualified for the proffered position.

Additionally, the petitioner has not established how his prospective employer intends to compensate him. The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it

must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The job description indicates that compensation for the position will be \$1,400 per month plus room and board. The petitioner provided copies of his IRS Form W-2, indicating that Word of Life Ministries paid him \$14,000 in 2007 and \$16,800 in 2008. The petitioner submitted no documentation that Word of Life Ministries compensated him for room and board. The regulation at 8 C.F.R. § 204.5(m)(7)(xii) provides that the prospective employer must attest that it has the ability and the intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges.

On remand, the director shall address whether the petitioner has provided sufficient documentation to establish how his prospective employer will compensate him and whether the compensation is sufficient to prevent the petitioner from becoming a public charge.

Further, 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.

The record does not reflect that a compliance review or other inspection has been conducted for the petitioner's prospective employer. On remand, the director shall determine whether additional verification of the petitioner's claims is warranted pursuant to the above-cited regulation.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.