

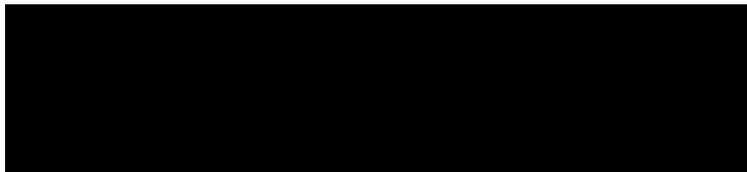
**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



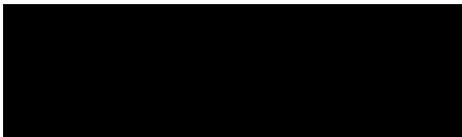
01

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 06 2005**  
WAC 03 231 53476

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:

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, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church of the United Methodist denomination. 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 music director/evangelist. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

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 issue in this proceeding is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. 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.

The regulatory 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 states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. 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. Some activities, such as

attending religious worship services and singing in a church choir, are obviously a traditional part of religious observances, but are not traditionally the work of paid employees.

Rev. Sangman Shin, pastor of the petitioning church, offers the following description of the position offered to the beneficiary:

She will direct all musical activities for our Church. This includes selecting the appropriate music for regular worship services, religious ceremonies, seasonal revival meetings and religious holidays. Further, [the beneficiary] will conduct the church choir for all religious holidays such as Christmas, Easter, etc. She will be responsible for organizing the choir group rehearsals, leading bible study and provide counseling for choir group members. With understanding of the church's evangelical principles, she will prepare and choose the appropriate religious hymns and songs to be used in various religious ceremonies and events. She will direct musical performances of seasonal concerts held for public benefit. She will travel with ministers to shelters, orphanages and nursing homes for evangelical purpose and community service.

Documents in the record show that the beneficiary holds a bachelor's degree and a master's degree in music, both from Ewha Women's University, Seoul, Korea. Transcripts show few courses pertaining to religion; as an undergraduate, the beneficiary earned one credit hour per semester for "Chapel," and earned a "C" grade in the 3-credit undergraduate "Introduction to Christianity." None of the identified graduate-level courses have any evident relation to religion or religious music.

The director instructed the petitioner to submit "a detailed description of the work to be done" and to "explain how the duties of the position relate to a traditional religious function." In response, the petitioner has submitted a new letter from Rev. Shin, repeating the essential points of the above description. A weekly work schedule shows various configurations of the duties listed in Rev. Shin's description. Almost all of the hours shown on the schedule concern choir practice and preparation, with one hour of "Bible study," one hour of "counseling," and three and a half hours of "Community service."

The question exists as to whether the petitioner's United Methodist denomination traditionally views the position of music minister/evangelist to be a paid, full-time position, rather than a task typically delegated to an unpaid volunteer during his or her spare time. The beneficiary states that, from 1980 to 1987, she held "a part-time and volunteer (unpaid) position" as "Hallelujah Choir-Accompanist at Shinrim Chungang Church." From 1987 to July 2001, the beneficiary "held the position as a Master of Choir and Evangelist at Dongnyuk Church. . . . The position was on a volunteer (unpaid) and part-time basis" (the beneficiary's emphasis). Thus, throughout over two decades of providing music for Methodist religious services, the beneficiary was consistently a part-time volunteer rather than a paid church employee. The beneficiary states that she held part-time paid positions as a university lecturer and middle-school professor. This employment was pervasively secular.

The director denied the petition, stating that the petitioner had not established that the beneficiary's duties relate to a traditional religious function, or that those duties are beyond the abilities of volunteers from the congregation. On appeal, counsel refers to "supporting case law," but the cited cases are all unpublished appellate decisions, which have no force as precedent decisions and do not constitute binding case law. While 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel asserts that the beneficiary is a "liturgical worker" and a "cantor," both listed at 8 C.F.R. § 204.5(m)(2) as examples of qualifying religious occupations. The inclusion of cantors in the list of qualifying examples does not require the approval of every petition filed on behalf of an alien who could conceivably be called a cantor. By way of analogy, we note that the regulation states that "workers in religious hospitals" hold religious occupations. A janitor or clerk in a religious hospital is, by definition, a worker in a religious hospital, but the definition also specifically states that janitors and clerks do *not* work in a religious occupation. Clearly, one must take into consideration the circumstances of each individual proceeding, rather than take a dogmatic or "cookie cutter" approach to the regulations that can lead to self-contradictory findings (such as with a janitor in a religious hospital).

The fact that the beneficiary was a part-time, unpaid volunteer church musician for over twenty years does not readily suggest that the petitioner's Methodist denomination tends to employ paid, full-time workers in such positions rather than rely on part-time volunteers. The petitioner submits no testimony from any denominational official, and cites no authoritative denominational publication or reference work, to suggest that churches in the United Methodist denomination typically employ paid, full-time music directors and that the beneficiary's two decades of admitted volunteer work in that capacity were, essentially, an aberration. The beneficiary's employment history, augmented by the beneficiary's own statements, indicates that for most of her career, she has been a music teacher who volunteered to share her musical talents with her church. The petitioner's submission on appeal does not change this assessment. Paying an alien to perform work that, within the denomination, is traditionally the domain of volunteers does not cause that work to become a qualifying religious occupation.

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.