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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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ei

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

APR 06 2005

WAC 01 217 53604

IN RE:

Petitioner:

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.

Maui Johnson

Σ Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter 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), to perform services as a choir director. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

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 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.

Citizenship and Immigration Services 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. The paid employment of one individual is not *prima facie* evidence that the position is *traditionally* a salaried occupation within the denomination.

Further, while the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (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).

Rev. Samuel Rhee, pastor of the petitioning church, states that the beneficiary's "duties . . . include assisting the Pastor with worship services and pastoral care, visiting church members, organizing special praise worship services, musical selection, musical adaptations, leading adult and youth choirs [and] musical accompaniment." In a subsequent letter, Rev. Chae Hon Nam, also identified as pastor of the petitioning church, states that the beneficiary's "duties include musical selections and adaptations, leading adult and youth choirs, musical accompaniment, organization of special praise worship musical programs, assisting in worship services and with pastoral care."

The director approved the petition on February 21, 2002, but subsequently issued a notice of intent to revoke on August 25, 2003, stating that, to show that an occupation qualifies as a religious occupation, the petitioner must establish "that specific prescribed religious training or theological education is required, 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 response, counsel cites the Department of Labor's Dictionary of Occupational Titles, which indicates that "choral directors" require roughly as many years of training as do members of the clergy. This argument is not persuasive, as the cited work makes no specific mention of religious music. It also refers to "glee clubs." Also, the definition appears in section 152, "Occupations in Music," rather than section 12, "Occupations in Religion and Theology." Thus, the definition in the Dictionary of Occupational Titles does nothing to

undermine the director's assertion that the work of a choir director is not religious, but rather a secular activity conducted in a religious setting. We note, however, that the same volume includes "pastoral assistant" under section 12.

The petitioner submits photocopied excerpts from *The Book of Discipline*, "the book of law of The United Methodist Church." Counsel states that this document establishes the religious nature of the choir director's position:

At page 149 of the Book of Discipline it is recognized that "To the end that music and other arts may contribute largely to the communication and celebration of the gospel, the work area chairman shall promote adequate musical leadership in the church . . . (and) encourage certification of music leaders as directors and ministers of music."

At page 137 of the Book of Discipline, the position of "the director or the associate of music" is specifically recognized.

The cited passage from page 149 is part of the list of duties for "[t]he work area chairperson of worship." There is no evidence that the *Book of Discipline* offers a similar delineation of the duties of a choir director. While it is true that the book states that the work area chairperson of worship "shall . . . encourage certification of music leaders as directors and ministers of music and music associates," the beneficiary does not hold any of these titles, nor is there any indication that the beneficiary has been certified by any "work area chairperson of worship." There is no indication that the United Methodist Church traditionally regards choir directors as paid, full-time religious workers. The same cited passage appears to place music on a par, in religious terms, with "architectural design" (cited as another "means of proclamation of the gospel").

As for the recognition of "the director or the associate of music" on page 137, once again the beneficiary holds neither title. Furthermore, when examined in context, this passage is obviously not a list of religious occupations. The passage defines "[t]he membership of the Administrative Board" of the local church. It lists over thirty different titles, some of which are obviously religious in nature (e.g., "pastor"), and others which have no discernible religious nature (e.g., "financial secretary" and "business manager"). Once again, there is no indication that every listed title corresponds to a paid, full-time position.

The cited excerpts from the *Book of Discipline* show that music is a part of church services, which we do not dispute. They do not show that the United Methodist Church recognizes choir directors as being, typically, paid, full-time employees of the church, nor even that the denomination recognizes that title at all.

Counsel observes that the regulation at 8 C.F.R. § 204.5(m)(2) specifically includes "cantors" in the definition of "religious occupation," and that *Webster's Seventh New Collegiate Dictionary* offers "choir leader" as one of two definitions of "cantor" (the other definition being specific to the Jewish faith). Counsel asserts that this is *prima facie* evidence that the beneficiary works in a qualifying religious occupation.

The director revoked the approval of the petition, stating that "the job offered . . . is a wholly secular function." On appeal, counsel argues that the director failed to consider the petitioner's arguments in response to the notice of intent to revoke. Counsel contends that the beneficiary is a "cantor" and that, by failing to recognize this, the director "re-writes the applicable regulation," which in turn is an impermissible abuse of discretion. Counsel again emphasizes the cited passages from the denomination's *Book of Discipline*, already discussed above.

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 counsel's discussion of workers in religious hospitals, another class of workers cited as holding religious occupations. A janitor or clerk in a religious hospital is, by definition, a worker in a religious hospital, but the definition 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).

Counsel is correct in criticizing the director's over-reliance on the issue of specialized religious training, a requirement outside the current regulations. Nevertheless, this error does not fatally undermine the director's decision. It remains that employment by a church is not automatic grounds for approval, and that the burden is on the petitioner to show that the position is inherently religious. In this instance, the beneficiary's duties as a "pastoral assistant" are only vaguely described, and seem to occupy only a small portion of the beneficiary's time. The beneficiary's remaining musical duties, as described, appear to concern the technical aspects of preparing a musical ensemble for performance, rather than a more active role in shaping religious services. The cited excerpts from the denomination's *Book of Discipline* do not alter this conclusion. Instead, they merely raise further questions, such as why a "work area chairperson of worship" appears to merit more discussion than "music leaders" do.

Based on the above, we find that the petitioner has not overcome the grounds for revocation as cited in the director's notice.

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.