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



U.S. Citizenship  
and Immigration  
Services

*CA*

[Redacted]

FEB 03 2005

FILE: [Redacted]  
SRC 02 144 50158

Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: 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.

*Mai Johnson*

*S* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and 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 music minister. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director further determined that the petitioner had not established that the position qualified as that of a religious worker or that it has the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits copies of previously submitted documentation.

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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) 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 April 9, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a music minister throughout the two-year period immediately preceding that date.

In its letter accompanying the petition, the petitioner identified the proffered position as that of music minister. The petitioner stated that the beneficiary was ordained by the church and authorized to preach. It stated that the beneficiary's duties would be to "head and coordinate our praise and worship, and be the pastor in charge of our music, and native language interpreter department."

In response to the director's request for evidence (RFE) dated March 19, 2003, the petitioner stated that the proffered position was that of "Musical Director, Praise and worship Leader and Native Language Interpreter." The petitioner described the duties of the position as follows:

[A]s the church musical director[, the beneficiary] will over see [sic] and handle all matters as [sic] arising pertaining to the music department, he will coordinate, and organize music festivals in our church and in the community as a whole and teach those who are interested in music in the church.

He will also be in charge of praise and worship, being the lead singer, he will sing special songs as required of him and will also interpret in native language when the Bishop is preaching or teaching to a group of people and the elderly in our midst . . . He is to function in administration as needed by the church and in Evangelism.

In a letter dated March 3, 2002, the pastor in charge of the Lagos branch of the Word of Hope Revival Church in Lagos, Nigeria, stated that the beneficiary "has been the pastor in charge [of] our music department, and praise and worship team since 1996." The petitioner submitted a January 31, 2000 letter from the church to the beneficiary notifying him that he was promoted from church music director to that of associate pastor (church administration) effective February 1, 2000, and setting his monthly salary at 10,000 Naira only. A January 29, 2001 letter sets the basic salary at 8,500 Naira only. Copies of pay vouchers reflect that the beneficiary received a monthly salary of 5,500 Naira only from April 2000 through January 2001, and additional allowances totaling 4,500 Naira only. The pay vouchers reflect that in February 2001, the beneficiary began receiving 8,500 Naira only in basic salary and an additional 6,500 in other allowances. The petitioner submitted no evidence of the duties performed by the beneficiary as associate pastor (church administration).

According to the petitioner, the beneficiary first "ministered" at the petitioning organization following his arrival in the United States on July 31, 2001, and the organization then requested his transfer from the branch in Lagos, Nigeria. The petitioner also stated that the Nigerian church paid the beneficiary's salary after his transfer from

Nigeria. The pay vouchers indicate that the Nigerian church paid the beneficiary through at least December 2002. As evidence of the beneficiary's work in the United States, the petitioner submitted copies of photographs that it states reflect the beneficiary at work. However, the photographs are not dated and contain no evidence that they reflect work in the United States. A church flyer names the beneficiary as the leader of praise and worship for a program on May 5, 2002. A church bulletin submitted as evidence is undated.

Pursuant to section 101(a)(27)(C)(iii) of the Act, the alien must be carrying on the same religious work for which he or she seeks entry into the United States continuously for the two years immediately preceding the filing of the visa petition. The evidence submitted by the petitioner indicates that in February 2000, the beneficiary was promoted from his position of music director to that of an associate pastor of administration. The petitioner submitted no evidence of the details of the beneficiary's duties in his position as associate pastor of administration.

The evidence does not establish that the beneficiary was employed in the same or similar occupation for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that the position qualified as that of a religious worker. Pursuant 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The 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. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

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.

As noted previously, the petitioner identified the proffered position alternatively as a music minister and music director. The duties as described by the petitioner include singing, organizing music festivals, teaching music, and providing interpretation for those who have difficulty with the English language. In its detailed description of the proffered position, the petitioner indicates that the beneficiary would teach Sunday school, play keyboard/organ during church service and interpret for the senior pastor during the preaching, perform Christian counseling and special prayers, do door to door evangelism and hospital visits, evangelistic outreach and choir practice.

While some of the duties as outlined by the petitioner, such as organizing and coordinating the praise and worship, are religious in nature, the majority of the duties are primarily administrative (organizing music festivals) or secular in nature (teaching music, interpretation). The petitioner has not shown that teaching in Sunday school, performing special prayers or making hospital visits rise to the level of a religious occupation or involve more than what is generally performed by a caring and dedicated member of the congregation.

The evidence does not establish that the proffered position is a religious occupation within the meaning of the regulation.

The petitioner must also establish that it has the ability to pay the beneficiary a wage. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner stated that it would compensate the beneficiary at the rate of \$250.00 per week. As evidence of its ability to pay this wage, the petitioner submitted a statement from its bank, reflecting that as of May 16, 2003, it had a balance of approximately \$69,832.00 in its checking account and approximately \$143.00 in savings, with average three-month balances of approximately \$9,631.00 and \$154.00, respectively. The petitioner also submitted copies of its "Statement of Activities" for the 12-month period ending December 31, 2002 and the five-month period ending May 31, 2003.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the other required types of evidence.

The evidence does not establish that the petitioner has the ability to pay the beneficiary the proffered wage.

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.