



U.S. Citizenship
and Immigration
Services

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FEB 15 2008

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 02 253 50029

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.

Robert P. Wiemann

R 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 its church music director/conductor. The director determined that the petitioner had not established that the position qualified as that of a religious worker.

On appeal, counsel submits a brief, a copy of a webpage from bartleby.com and 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).

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.

In its "Letter of Intention" dated July 29, 2002, the petitioner stated that in the proffered position:

[The beneficiary] will plan, lead hymns at worship, organize and direct the church choir, designed [sic] to promote religious music education among choir and church members. She will analyze member participation and changes in church religious musical programs according to the needs for musical problems and difficulties. Plan church musical activities

and projects and encourage active participation in programs. Visit homes of choir members and confer with clergy members and church officials. Provide new [sic] music and arrangement for youth and adult choirs and instruments. Give special vocal lessons to soloists and all choir members. Directs group and individual practice.

In response to the director's request for evidence (RFE) dated November 13, 2002, the petitioner stated that the beneficiary had been working as a music director/conductor since October 1998. On her 2000 Form 1040, U.S. Individual Income Tax Return, however, the beneficiary lists her occupation as "pianist."

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.

On appeal, counsel asserts that the proffered position meets the dictionary definition of "cantor" and that "cantor" is a recognized religious occupation in the regulation. Although counsel argues that the duties as outlined for the proffered position fall within the dictionary definition, we find the argument unpersuasive as not every church music director or choirmaster is a cantor within the meaning of these proceedings. We note that the petitioner has described the job as that of a music director/conductor, and not that of a cantor.

According to the Dictionary of Occupational Titles (DOT), a cantor:

Chants and reads portions of ritual during religious services, and directs congregants in musical activities. Arranges musical portion of religious services in consultation with leader of congregation. Chants or recites religious texts during worship services or other observances and trains and leads congregants in musical responses. May create variations of traditional music or compose music for services. May train and direct choir or teach vocal music to youth or other groups of congregants.

Counsel bases his argument that the proffered job is that of a cantor because the term is defined in the dictionary as "the person who leads a church choir or congregation in singing; a precentor." Although the

beneficiary appears to perform some of the functions listed under the job title "cantor" in the DOT, there is no evidence that she "chants" or recites religious text during the course of the religious service or that she trains the congregation in the proper responses to those chants or recitations.

The evidence establishes that the beneficiary is music director for the petitioner. Therefore, the petitioner must establish that the position is a traditional religious function within its denomination.

Counsel asserts on appeal that the court in *Perez v. Ashcroft*, 236 F. Supp.2d 899 (N.D. Ill. 2002) made an "obvious holding" that "given the detailed and uncontroverted description of the integral role that so many of Perez' musically oriented activities play in worship services, it is really beyond dispute that his position as music director qualifies as a religious occupation."

We note, however, that the court also found: the petitioner's denomination:

[The petitioner's denomination, Southern Baptist] believe[s] that music can be a form of ministry and that they can express their relationship with God through music [citations omitted]. To that end, for over 60 years all Baptist colleges and seminaries have offered degrees in music ministry [citation omitted]. Individuals who are hired to lead music for Baptist congregations must demonstrate a religious commitment and are considered to be ministers.

While we note the role of music in religion, not every music related position constitutes a religious occupation within the meaning of the statute. The petitioner submitted no evidence that the proffered position existed in the petitioning organization before the beneficiary assumed the position, or that it is a position that is recognized and defined by the Presbyterian Church. The beneficiary listed her occupation on her year 2000 Form 1040 as that of pianist. The petitioner has not established that the proffered position is a traditional, full-time, salaried position within its denomination.

Beyond the decision of the director, the petitioner has 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 regulation at 8 C.F.R. § 204.5(m)(1) 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 August 7, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working in a qualifying occupation throughout the two-year period immediately preceding that date.

As discussed above, the petitioner has not established that the position of music director qualifies as that of a religious worker within the meaning of the statute and regulation. Also as noted above, the beneficiary indicated on her year 2000 Form 1040 that her occupation was that of pianist and reported wages of \$9,000, which corresponds with the wages reported on the Form W-2, Wage and Tax Statement, issued by the petitioner, a copy of which is included in the record. We note that the beneficiary first listed her occupation as music director on her year 2001 Form 1040 with reported wages of \$18,000, double that of what she reported the previous year as a pianist. This substantial increase in wages, without further explanation, implies a corresponding increase in duties that would be associated with the beneficiary assuming the position of music director with the petitioning organization.

The evidence is insufficient to establish that the beneficiary was working continuously as a music director for two full years preceding the filing of the visa petition.

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.