

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

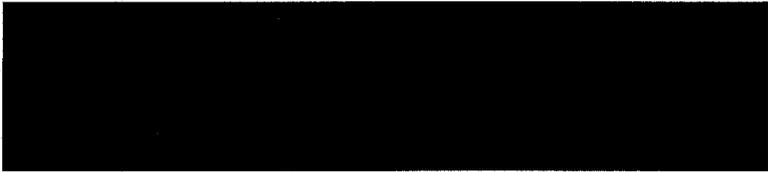
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

CL



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 28 2005
WAC 03 155 54045

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.

Robert P. Wiemann, Director of
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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 ministry associate for music and multimedia. The director determined that the petitioner had not established that it possesses the required tax-exempt status as a religious organization, or that the beneficiary's position qualifies as a religious occupation.

On appeal, counsel argues in a brief that the director's decision was incorrect and unconstitutional.

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--

* * *

(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).

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner has submitted a 1968 recognition letter from the Internal Revenue Service (IRS), addressed to a church with the same name as the petitioner but located on West Walnut Avenue rather than the petitioner's current Riggan Road address.

The director, in a request for evidence, observed the discrepancy between the address on the IRS letter and the petitioner's current address. In response, counsel asserts that the tax-exempt "status was conferred specifically on the petitioning church organization, not on an 'address,' and has never been revoked." The issue is not that the exemption applies to the address *per se*. Rather, the burden is on the petitioner to show that it and the organization named in the letter are one and the same. The petitioner submits copies of pastoral directories, referring to a recent move.

In denying the petition, the director stated that the petitioner has offered "no explanation" for the different addresses. The director evidently disregarded the pastoral directories, one of which (from 1996) specifically states that the church "move[d] locations from the corner of County Center and Walnut to Akers and Riffin Road." These locations correspond to the addresses on the IRS letter and the petition, respectively. The petitioner's claim that the church relocated in 1996 is credible, and suffices to account for the discrepancy in addresses. We withdraw the director's finding to the contrary.

The next 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 petitioner's music director, describes the position offered to the beneficiary:

The person filling this position must have knowledge, training and experience in the religious fine arts, and specifically contemporary Christian music and Christian drama, cinema and videos. The primary functions of the position will be: applying a knowledge of religious music and religious multimedia (with an emphasis on film) to the needs and capabilities of the congregation; selection and adaptation of contemporary Christian music, drama and film for worship; supervising and recruiting instrumentalists and vocalists in the church and community, including providing pastoral care to these individuals; arranging music for different instrumentation and/or vocal parts; performing computer editing of music; handling pianist duties at worship services and rehearsals; and counseling persons both within and outside of the congregation of Christian music, film and video resources, and promoting and overseeing distribution of these resources.

The director instructed the petitioner to "explain how the duties of the position relate to a traditional religious function." In response, counsel asserts that the beneficiary's "services are required exclusively in connection with Christian worship services," and he works with "music that is explicitly religious in character."

The director denied the petition, stating that duties relating to the performance of music "are essentially secular rather than traditional religious functions." The director added "there is no inherent requirement that a

person involved as a Music Services Director of a religious service to be [sic] a member of the petitioner's denomination."

On appeal, counsel contends that it is an unconstitutional violation of the Establishment Clause for the director to rule on what is or is not a traditional religious function. The AAO lacks authority to rule on constitutional questions, but we note that the regulatory definition of "religious occupation" requires a given position to relate to a traditional religious function. This requirement would be meaningless if the director had no discretion to examine what constitutes a traditional religious function. Counsel cites no federal court ruling striking down the "traditional religious function" clause in the regulations.

Counsel cites an unpublished appellate decision in which the AAO found that "a 'tablachi' or religious musician in the Sikh faith is a religious occupation. Why the duties of a musician within the tradition of one faith would qualify as relating to a traditional religious function, but the duties of a musician in another tradition would not, defies logic." This argument fails to take into account the varying practices and traditions of different faiths. Serving communion wafers relates to a traditional Roman Catholic function, but the exact same activity is not traditional within, say, [REDACTED]. Also, Roman Catholic churches serve wine to congregants, but Islam forbids the consumption of alcoholic beverages. It in no way "defies logic" to say that these integral components of the Eucharist relate to a traditional religious function in one religious tradition (Roman Catholicism) but not in others. Counsel has not shown that music plays exactly the same role in every denomination of every religion.

Even within the narrower field of Protestant Christian denominations, it is certainly conceivable that some denominations traditionally employ paid, full-time musical staff, while other denominations may rely on the part-time volunteer assistance of a parishioner who happens to be able to play the piano or organ. The traditional religious function must be in the context of a paid occupation. Otherwise, if we simply state that music is a traditional element of church services, then every alien member of every church choir (and, arguably, every parishioner who participates in the singing of hymns) qualifies for benefits by way of performing an activity that relates to a traditional religious function. Such consideration is necessary to avoid abuse of the special immigrant religious worker classification; otherwise, a church could secure immigration benefits for an alien simply by taking a duty usually performed by an unpaid volunteer, and claiming that the position will henceforth be a paid occupation.

More persuasively, counsel argues that the beneficiary's duties involve counseling and liturgical duties beyond simply performing music. From the descriptions provided, it is evident that the beneficiary does not merely serve as an accompanist or vocal coach for the volunteer choir, but rather exercises some degree of control over the religious content of the liturgy. We withdraw the director's decision, but review of the record reveals another issue that requires attention.

The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on April 23, 2003. The petitioner's description of the proffered position appears elsewhere in this decision. Throughout the two-year qualifying period, the beneficiary must have continuously performed similar duties in order to qualify as a special immigrant religious worker.

The petitioner does not indicate that the beneficiary has already begun working as the petitioner's ministry associate for music and multimedia. Rather, [REDACTED] states "[f]or the last five years, [the beneficiary] has been working . . . as Music Services Director for Stone Ministries, Inc., and specifically with the touring musical group under that organization known as the 'Celebrant Singers.'" Mr. [REDACTED] states that the beneficiary's "duties with that organization have included many of the duties that are required of the Ministry Associate," as well as "production, promotion and distribution of cassettes, CD's, videos and DVD's for Stone Ministries, Inc."

[REDACTED] president of Stone Ministries, states that the beneficiary "was employed by us in the position of DIRECTOR OF MUSIC SERVICES for the period February 2001 – to present," i.e., April 2003, but he provides no details about the nature of the beneficiary's work. The beneficiary's own resume lists his duties as "Music Arranging, Computer Editing/Copying (Finale Notation Program), Librarian." Because the beneficiary was a Stone Ministries employee throughout the entire qualifying period, it is crucial to establish the nature of his work there.

The available evidence is not sufficient to establish that the beneficiary's past work with Stone Ministries is essentially the same as his proposed work with the petitioner. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Absent evidence that [REDACTED] worked with the beneficiary at Stone Ministries or was part of that company's management or personnel structure, there is no reason to conclude that [REDACTED] would have direct, personal knowledge of the beneficiary's work there.

The regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for the past two years.

The petitioner must, therefore, establish that the beneficiary's past work at Stone Ministries is similar enough to the proffered position to allow the conclusion that the beneficiary's proposed future work would represent, essentially, a continuation in the same duties. The petitioner must also show that this work, like the proposed work, amounts to a religious occupation. The "production, promotion and distribution of cassettes, CD's, videos and DVD's" appears to involve inherently secular functions which, in this case, happen to involve religious content. To offer an analogy, while 8 C.F.R. § 204.5(m)(2) includes "religious broadcasters" in the definition of "religious occupation," it does not follow that a cameraman or sound technician on a religious television program would qualify for immigration benefits as a special immigrant religious worker.

Therefore, 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 Administrative Appeals Office for review.