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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

JUN 29 2005

WAC 02 271 50750

IN RE:

Petitioner:

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 a gospel evangelist (worship leader). The director determined that the petitioner had not established that the position qualified as that of a religious worker or that it had extended a qualifying job offer to the beneficiary. The petitioner filed a previous Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on behalf of the beneficiary on March 7, 2000 (WAC 00 113 53844) for the same position. The Director, California Service Center denied that petition on June 22, 2001.

On appeal, counsel submits a brief and additional 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 first issue on appeal is whether the petitioner established that the proffered position qualifies as that of a religious worker. Pursuant to 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 as a religious worker.

In its letter of July 16, 2002, the petitioner stated:

As a Gospel Evangelist (Worship Leader), [the beneficiary] is responsible for conveying inspirational messages from the Bible, through the medium of music. He chants hymns or reads portions of ritual or sings solos consisting of psalms and biblical stories at worship services, as well as at church sponsored functions . . . His important duties are preaching, educating and leading worships. He helps and cooperates [sic] senior pastor and other ministry workers with church gospel music. He coordinates and selects gospel and praise songs with choir director for . . . worship services appropriate to the pastor's sermon and messages. While leading worship praise team, even though it's not like sermon, he proclaims and conveys God's message, Bible and evangelism. He researches and collects any kinds of trends and information on Christian church music because he preaches evangelical words thru [sic] medium of sound.

Also, he teaches and educates church members as an active worship leader. Most of all, he leads prayer meeting and Bible study of the praise team adult gospel music class members . . . He is responsible for rendering spiritual and personal counseling to congregants . . . He also conducts gospel music class . . . Finally, he is actively involved in leading worships.

In response to the director's request for evidence (RFE) dated November 18, 2003, the petitioner further expounded upon the duties of the gospel evangelist, listing what it states are the "specific job duties" of the position, which includes "duties on church music" and "duties on evangelical and mission ministry." Included in the "duties on church music" are giving lectures, educating and leading worship, especially with church music; coordinating and selecting gospel and praise songs with the choir director, chanting hymns and reading portions of the ritual; singing; leading prayer meetings and Bible study for the praise team; researching new trends in church music and adapting the music for worship services and other church activities; conducting gospel music classes; and providing counseling.

Included in the "duties on evangelical and mission ministry" are preaching, teaching, counseling, managing and leading the congregation; teaching in Bible study classes; analyzing data and research from questionnaires and conducting interviews to improve the quality of church events and Christian teaching methods; attending ministers' meetings to set the church's visions and goals; organizing schedules and training short-term mission teams and dispatching them to third world countries; and leading the mission training programs and orientations.

The petitioner stated that the duties of the proffered position encompasses more than 40 hours per week, and that it is compensated at the rate of \$16,800 per annum.

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, the petitioner submits excerpts from *The United Methodist Book of Worship*, which mention the role of worship leaders in the worship order. However, the excerpts do not reference the position of “gospel evangelist.” The petitioner also submitted a list of vacancy announcements from the United Methodist Church website. Several refer to worship leaders, some with accompanying duties as music leader. There are also several positions listed for music minister or director of music ministries. The excerpt from *The United Methodist Book of Worship*, on page 16, states, “Congregational worship services should include stories, songs and other music.”

The evidence reflects that, regardless of the title given to the position, the duties primarily involve musical activities. Nearly all of the proposed duties are to be accomplished “through the medium of music.” The evidence also reflects that music is an integral part of the Methodist worship services. However, the evidence does not establish that the United Methodist Church recognizes the position of gospel evangelist (worship leader) as being typically a paid, full-time employee of the church insofar as those duties are entirely or primarily accomplished through music. In this instance, the beneficiary’s duties as a “gospel evangelist (worship leader)” 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 evidence does not establish that the position is a religious occupation within the meaning of the statute and regulation.

The second issue on appeal is whether the petitioner extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner stated that the beneficiary volunteered his services in the proffered position until approval of his R-1 nonimmigrant religious worker visa, at which time the petitioner hired him and began paying him a salary. The director determined that, as the beneficiary worked in a volunteer capacity for a year prior to approval of the R-1 visa, the petitioner had not established the need for a paid position, and therefore had not established that it had extended a qualifying job offer to the beneficiary.

On appeal, counsel asserts that the person serving in the position prior to the beneficiary had quit for personal reasons, and that the beneficiary volunteered to fill the position until a qualified candidate could be found.

Counsel also asserts that the beneficiary served on a voluntary basis because he did not have work authorization in the United States. The record contains no evidence to corroborate these statements by counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Nonetheless, the validity of a qualifying job offer is not contingent solely upon whether the proffered position was historically compensated by the petitioning organization. The evidence fails to establish that the position is normally a full-time compensated position within the petitioner's denomination. As the petitioner has not established that the position is a religious occupation within the meaning of the statute, it has not established that it has extended a qualifying job offer to the beneficiary.

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.