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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
SRC 02 078 51395

Office: TEXAS SERVICE CENTER Date: 02/18/05

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:

SELF-REPRESENTED

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

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office 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 minister of music and audio engineer. The director determined that the petitioner had not established: (1) that it seeks to employ the beneficiary in a qualifying capacity; (2) that the beneficiary had the requisite two years of continuous work experience in the position sought immediately preceding the filing date of the petition; (3) that the petitioner qualifies as a tax-exempt religious organization; or (4) that the beneficiary entered the United States in order to perform qualifying religious work.

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 is whether the petitioner seeks to employ the beneficiary in a qualifying capacity. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means 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.

With regard to the definition of "religious occupation," 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.

secretary of the petitioner's board of directors, describes the beneficiary's work:

[The beneficiary] assists in ministerial responsibilities as designated by his supervisors in hospitality ministries, audio/video, and men's ministry and music ministries. Also, he is involved in the production [of] Praise and Worship music. His projected duties include but are not exclusive to Spiritual counseling, leadership training, conducting the sacraments of water baptism, Holy Communion, marriage ceremonies and funeral services. He is to [work] a minimum of 30 hours per week.

Several of these duties appear to be those of a minister. refers to the beneficiary with the title "Rev.," and states that the beneficiary "is highly qualified for ministerial status with our Church having attended ministry training seminars."

Subsequently, following a request for additional information about the nature of the proffered position, the petitioner submitted an unsigned job description containing the following information:

Current Proffered Position:

Full-time Minister of Music and Audio Engineer at Mundo de Fe's mission church located in Port Arthur, Texas. . . .

Duties:

1. Audio and Video Dept:

- a. Video recording and editing.
- b. Video duplicating.
- c. Production of TCN and info Videos for Church's internal use.
- d. Audio recording and editing of preaching and teachings.

2. Tape Ministry:

- a. Tape duplication.
- b. Tape labels design.

3. Music Ministry:

- a. Lead Praise & Worship during all services. Play keyboards/guitar/bass as needed [at] special activities.
- b. Develop Praise & Worship team.

4. Security:

- a. Lock and turn off lights and devices of Church buildings every night.
- b. Open Church as requested.

This more recent description contains no mention of spiritual counseling, leadership training, or the traditionally ministerial duties of conducting baptism, marriage, and funeral ceremonies.

The director denied the petition, stating: "It cannot be determined that this is a permanent job offer. The petitioner has not enclosed the substantial information about the beneficiary's proposed employment as it relates to the ministry of music. The amount of time dedicated to the position has not been provided." The director further concluded that the petitioner had not shown that the church required the services of a full-time music minister.

On appeal, [REDACTED] acknowledges the previously submitted job description, but states that the beneficiary "is not limited to those duties listed, and as an ordained minister he is responsible for performing the sacerdotal duties (i.e. baptisms, laying on of hands, weddings, sacraments)." The appeal appears to be the first occasion on which Rev. Holland specifically claims that the beneficiary has been ordained. The appeal includes no documentation of this ordination.

In *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978), the Board of Immigration Appeals determined that an alien whose "training, experience and duties lie primarily in the field of music rather than theology" did not qualify as a "minister" for immigration purposes. The Board also noted that the assertion that the alien is authorized to perform the duties of clergy does not demonstrate that the alien actually has or will perform those duties.

Rev. Holland asserts: "Music is an integral part of worship for the worship services for the church organization. Music is 50% of the actual service." The appeal includes a work schedule, indicating that the beneficiary spends 25 hours per week in his office, ten hours directing worship services, and an unspecified amount of time in rehearsals. The new schedule does not mention many of the duties provided in the earlier job description, such as tape editing and duplication. Such technical functions are intrinsically secular.

The petitioner's changing descriptions of the beneficiary's duties do not provide a consistent picture of what it is, exactly, that the beneficiary has been or seeks to continue doing at Mundo de Fe. Given the very significant differences between these descriptions, we cannot conclude that the petitioner has persuasively demonstrated that the beneficiary will carry on the vocation of a minister, or that he seeks to work in a qualifying religious occupation. At times, the petitioner appears to have indicated that the beneficiary's primary or major function is in the secular task of an audio engineer.

The director, in denying the petition, stated: "the petitioner states the beneficiary will work at Mundo de Fe's mission church located in Port Arthur, Texas. The petitioner has not presented any evidence these two entities are associated, affiliated, or subsidiaries of each other." [REDACTED] had previously stated that Mundo de Fe is a Hispanic ministry of the petitioning church. The letter containing this assertion arrived in an envelope bearing a printed address label that reads "Mundo de Fe" followed by the petitioner's street address. The record does not appear to contain evidence that would raise doubt about the asserted connection between the two churches.

The next issue concerns the beneficiary's past experience. 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 January 7, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the proffered

position throughout the two years immediately prior to that date. The beneficiary entered the United States on May 17, 2001, and therefore he was outside the United States for most of the two-year qualifying period.

██████████ director of Ministerios de la Cruz in Costa Rica, states that the beneficiary "served in Ministerios de la Cruz for three years." He does not provide any dates, nor does he explain the beneficiary's duties. ██████████ in describing the beneficiary's work in the United States, sometimes describes the beneficiary's duties in the present tense, but there is no indication of when the beneficiary began those duties, the extent of his work, or the nature of his compensation (if any). In *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), the Board of Immigration Appeals ruled that an individual who performed part-time, uncompensated religious work lacked the continuous experience necessary for the immigration benefit sought.

The director, in the denial notice, noted that the petitioner has not submitted any payroll or tax documentation to establish past salary payments to the beneficiary, and therefore, the director concluded: "The petitioner has not submitted any evidence that the beneficiary is recognized as a valid employee of the petitioning organization." On appeal, the petitioner does not address this finding. We affirm the director's finding that the petitioner has not adequately demonstrated that the beneficiary possesses the required continuous experience.

The next issue concerns the petitioner's tax status. 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.

In his initial letter ██████████ stated that the petitioner "is a duly registered and recognized 501(c)(3) organization," but he provided no documentation from the Internal Revenue Service (IRS) to verify this recognition. The director instructed the petitioner to "submit a copy of the IRS's 501(c)(3) for the petitioning organization." In response, the petitioner submitted a copy of its Texas Sales and Use Tax Exemption Certification. This state-issued document is not evidence of exemption from federal income tax. The petitioner, at the time, offered no explanation as to why it did not submit a copy of the IRS' recognition letter, which the director had specifically requested.

The director denied the petition, stating that documentation of the petitioner's state tax exemption was insufficient because the petitioner must establish *federal* exemption. On appeal, the petitioner submits a copy of an IRS determination letter, dated April 29, 1988. The petitioner does not explain why this document was not submitted when the director specifically requested it.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See*

8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. We note that, because there are other grounds for dismissal, acceptance of the IRS letter would not have altered the outcome of the appeal.

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on qualifying religious work. In this instance, the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure. Thus, the director concluded, the beneficiary did not enter the United States for the purpose of performing qualifying religious work.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. We therefore withdraw this particular finding by the director. At the same time, we concur with the director's observation that there is no evidence that, upon entering the United States as a B-2 nonimmigrant, the beneficiary immediately or promptly began performing qualifying religious work. This speaks to the issue, already addressed, of the continuity of the beneficiary's religious work during the two-year qualifying period.

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.