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FILE: [Redacted]
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Office: CALIFORNIA SERVICE CENTER

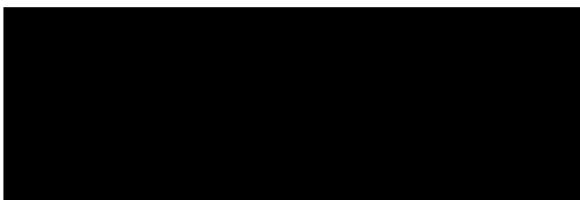
Date: NOV 02 2006

IN RE: Petitioner:
Beneficiary:



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.

2 Robert P. Wiemann, Chief
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 appeal will be sustained and the petition will be approved.

The petitioner is an outreach church of Word International Ministries, a Pentecostal Christian denomination. 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 music minister. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

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 sole issue in contention 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. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services 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.

Pastor of the petitioning church, describes the beneficiary's work:

As Music Minister, [the beneficiary] will be responsible for overseeing the Christian music program for our church. He will lead the praise and worship team, which consists of singers, instrumentalists and sound technicians. He will recruit, lead and train them through music education as well as Bible studies. He will provide spiritual music for all worship services and church gatherings. . . .

He will also supervise all rehearsals, oversee the purchase and maintenance of all musical instruments and equipment needed for the music industry. He will educate the congregation in the area of music and worship by organizing seminars and workshops, providing ongoing training through books, albums and other resources.

The Music Minister must be in tune with the spiritual needs of the congregation in order to select the appropriate songs that will facilitate effective worship. . . .

Unlike traditional churches, the musical component of our service involves the singing of choruses instead of hymns and our service begins with 30-45 minutes of praise and worship instead of a few hymns during service. During this time of praise and worship, the Music Minister not only leads the congregation in singing, he exhorts them to focus on God as well as God's attributes.

In a letter dated October 25, 2000, [redacted] Spiritual Director of Word for the World, Makati City, Philippines, states: "For the last two years (1999-2000), [the beneficiary] headed up the Music Ministry of Word for the World Christian Fellowship, a church of 5,000 members." During that same period, the beneficiary was a music instructor for three semesters at the Asian Seminary of Christian Ministries, according to the seminary's Dean of Academics, [redacted]

The director instructed the petitioner to submit additional details about the beneficiary's duties, and to "explain how the duties of the position relate to a traditional religious function." In response, Pastor [redacted] essentially restates the basic points set forth in his prior letter. The petitioner also submits a copy of the beneficiary's weekly schedule and tax documents showing that the beneficiary and Pastor [redacted] are the petitioner's only paid employees.

The director denied the petition, stating: "Fields related to music . . . do not qualify as religious occupations because the jobs are essentially secular rather than traditional religious functions. . . . [The beneficiary's] duties are not necessarily dependent on any religious background or prescribed religious education." The director acknowledged that the beneficiary performs a variety of functions for the petitioner, but "at least 25

hours [of the beneficiary's 40-hour weekly schedule] are devoted strictly to musical activities." The director concluded: "the evidence is insufficient to establish that the position of Music Minister is a traditional religious function within the meaning of the regulations."

On appeal [redacted] an elder and council member of the petitioning church, argues that the beneficiary does not merely provide musical accompaniment during worship services: "[The beneficiary's] work has taken the music ministry to a level beyond the church's expectations. . . . The church's worship services have been energized and have become relevant to the culture it is trying to reach." [redacted] discusses the petitioning church's struggles from its 1990 founding to the beneficiary's arrival a decade later. [redacted] states that the beneficiary's "position and function certainly cannot be accomplished by a mere musician in church. We know this for a fact because we have tried the alternative for ten years and we hope never to go back to that." [redacted] cites the beneficiary's documented prior employment history to demonstrate that the beneficiary's dedication goes well beyond that of a churchgoer who happens to be able to play a musical instrument. The beneficiary has taken advanced courses at seminaries and elsewhere, and the record indicates that the beneficiary utilizes this preparation in his work for the petitioner.

The issue of religious music has been the subject of much consideration and debate. The AAO agrees with the director that some church musicians do not hold qualifying religious occupations. A member of the congregation who has some musical aptitude, and who volunteers to play the church organ or lead the choir at Sunday morning services, would not qualify for immigration benefits based on such activity. Applying the label "music minister" to such a person would not compel a favorable finding. We do not agree, however, that music is so pervasively and fundamentally secular as to presumptively disqualify every church worker whose primary duties involve music.

The description that the petitioner has provided of the beneficiary's position indicates that the beneficiary is no mere organist or choir director. Rather, he appears to be an integral part of several key church functions. Credible documents in the record show that the petitioner has consistently paid the beneficiary a salary consistent with full-time employment. The beneficiary is not a part-time worker or volunteer for whom the filing of an immigrant petition has accompanied an abrupt promotion to paid, full-time work. The director has cited nothing, and the record contains nothing, that would tend to impugn the petitioner's credibility regarding the nature or significance of the beneficiary's work.

Pursuant to the above, upon careful consideration, we find that the petitioner has demonstrated that the beneficiary holds, and will continue to hold, a qualifying position in a religious occupation. 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 met that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.