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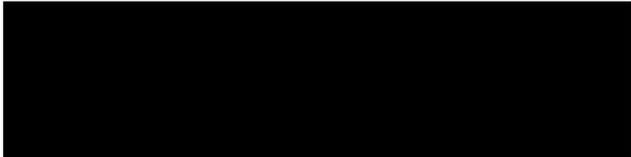
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
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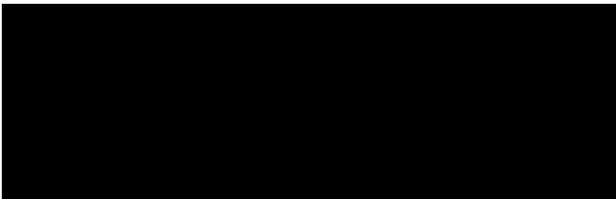
Office: VERMONT SERVICE CENTER

Date: AUG 06 2007

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.

*for*   
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont 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 Roman Catholic parish. 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 cantor/choir leader. The director determined that the petitioner had not established that the beneficiary had been, or would be, employed in a qualifying manner in a religious occupation.

On appeal, the petitioner submits arguments from counsel and new exhibits.

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 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 March 15, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a cantor/choir leader throughout the two years immediately prior to that date. The term “continuously” is discussed in a 1980 decision in which the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was

a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980).

In a letter accompanying the initial filing [REDACTED], Pastor of the petitioning church, stated:

We have estimated that the position will require approximately twenty-two (22) to thirty (30) hours a week. Based on our previous experience, we estimate the following hours for the position[']s various responsibilities:

- Three hours of choir or individual performance at Masses and various religious services;
- Six to eight hours a week of choir practice;
- [F]our to six hours a week of teaching in the School; and
- Five to seven hours a week researching music, translation of music and choir preparation.
- Four to six hours a week for Parish pastoral duties.

The petitioner submitted a copy of a worship program dated April 10, 2005. On the front page appears this legend:

**MINISTERED BY:**

[REDACTED]	Administrator	[REDACTED]	Secretary
[REDACTED]	Deacon	[REDACTED]	Principal
[REDACTED]	Organist	[REDACTED]	

The beneficiary's name does not appear in this April 2005 program.

On May 2, 2006, the director instructed the petitioner to "submit evidence that establishes that the beneficiary will be employed full-time in . . . [qualifying] religious work." In response, counsel stated that the beneficiary "will be employed thirty (30) hours a week at the Church, not counting personal preparation and personal practice, which is several hours a day." The petitioner also submitted other materials, including a letter from [REDACTED]. These other materials were aimed at establishing that the beneficiary's position qualifies as a religious occupation, and do not address the issue of full-time employment.

The director denied the petition on November 3, 2006, stating that the petitioner had "not provided evidence that the beneficiary has been or will be employed full-time. . . . The record does not establish that the beneficiary has been and will be employed in a religious occupation." The director also noted that, in the initial filing, the petitioner described the beneficiary's projected future schedule as a 22 to 30-hour week, and that the petitioner "did not indicate how many hours the beneficiary has been working, or for who the beneficiary was working for" (*sic*).

On appeal, counsel asserts that the beneficiary's "position is synonymous with the DOT occupation of Cantor – DOT 129.027-010." The petitioner had previously submitted a copy of a page from the Department of Labor's Dictionary of Occupational Titles, recognizing the status of cantors as counsel claims. In context, however, the director does not appear to have contested that the beneficiary's work qualifies as a religious

occupation. Rather, the director observed that the record was silent regarding the beneficiary's past work, and that the intended future work did not meet the requirements for a qualifying job offer. In this sense, the issue is not whether the work constitutes a religious occupation, but whether the beneficiary has and will engage in the occupation.

Counsel observes that the beneficiary is in the United States under an R-1 nonimmigrant religious worker visa, for which the petitioner was named as the employer. Visa documents from July 2004, however, are not and logically cannot be evidence of qualifying experience accumulated after July 2004.

Counsel states that the beneficiary works full-time because he is "employed for 30 hours a week compensated and five to seven hours a week uncompensated." [REDACTED] agrees, stating that, beyond his original estimate of the beneficiary's work hours, the beneficiary "would spend substantial time researching selections in English and Polish and his own personal practice. . . . As such his total working period far exceeds the estimated time."

We do not find [REDACTED]'s revised claim to be persuasive. In his first letter, in which [REDACTED] estimated the beneficiary's weekly schedule to comprise between 22 and 30 hours, [REDACTED] specifically included "[f]ive to seven hours a week researching music." Now, on appeal, [REDACTED] claims that "researching selections" should be counted in *addition* to the original schedule, when it was clearly *part* of that original schedule.

The petitioner devotes little time on appeal to the director's observation that the petitioner has not established the beneficiary's prior employment between March 2004 and March 2006. In his newest letter, dated November 18, 2006, [REDACTED] states that the beneficiary "has been working for [the petitioner] in R-1 status for over a year." The phrase "over a year" is rather vague and open-ended. This newest letter marks the first occasion on which the petitioner refers to the beneficiary's past work, rather than future work that the beneficiary is expected to perform.

The petitioner submits a November 2006 church program, bearing this legend on its front page:

**MINISTERED BY:**

[REDACTED] Pastor  
[REDACTED] Secretary

[The beneficiary], Music

[REDACTED]

The petitioner's addition of the beneficiary's name to church publications approximately a week after the denial of the petition does not overcome the director's stated grounds for denial. As noted previously, the beneficiary's name did not appear on the program from April 2005. The record contains no documentary evidence (such as payroll records) to show that the beneficiary performed compensated work for the petitioner, or for any other Roman Catholic church, continuously throughout the entire two-year qualifying period.

Based on the above discussion, we affirm the director's conclusion that the petitioner has not established that the beneficiary was continuously engaged in a qualifying religious occupation throughout the two years

immediately prior to the petition's filing date. Likewise, the petitioner's attempted revision of the beneficiary's work schedule does not establish the existence of an offer of full-time employment.

The subject of the offer of employment raises additional obstacles to approval of the petition. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

8 C.F.R. § 204.5(m)(4) requires the prospective employer to specify the job offer, including terms of compensation. 8 C.F.R. § 204.5(g)(2) requires the petitioner to submit certain types of evidence in order to establish the prospective employer's ability to pay the beneficiary. Here, the petitioner has submitted no financial documentation to establish its ability to pay the beneficiary. The petitioner has not even set forth the terms of compensation. In fact, in this proceeding, the petitioner itself has never even specifically stated that the petitioner will pay the beneficiary at all, much less specified the amount of compensation. Counsel's references to compensation carry no evidentiary weight. *See Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record is likewise devoid of evidence that the petitioner has, in the past, ever paid the beneficiary. Therefore, the petitioner has failed to meet its burden of proof regarding the terms of compensation and its financial ability to meet those terms. This finding relates, somewhat, to the director's finding that the petitioner has not established that the beneficiary has been or will be employed in a religious occupation (because without evidence of compensation, it cannot be determined that the work amounts to an occupation as opposed to volunteer work).

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.