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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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[redacted]

APR 0 7 2010

FILE: WAC 08 188 51960 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, 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 Catholic archdiocese. 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 director of liturgy and music. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation and that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The petitioner submits a letter and additional documentation in support of the appeal.

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 September 30, 2012, 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 September 30, 2012, 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 presented on appeal is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as an occupation that meets all of the following requirements:

> (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
>
> (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
>
> (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
>
> (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The petitioner's February 25, 2008 employment agreement with the beneficiary provides that as director of liturgy and music, the beneficiary will be "responsible for facilitating the worship life of the parish community by coordinating and providing quality liturgical experiences which celebrate and strengthen the membership's journey of faith." In a position description provided with the initial submission, the petitioner describes the purpose of the proffered position as:

- Responsible for facilitating the worship life of the parish community by coordinating and providing quality liturgical experiences which celebrate and strengthen the membership's journey of faith.
- Directs, coordinates and/or performs music, which is liturgically appropriate; for parish liturgies and other designated celebrations.

Among the other responsibilities of the position, the beneficiary is required to design and coordinate a comprehensive liturgical program; produce leaflets for special liturgies; supervise and train "a number of musicians and cantors" and a "number of specially designed musical performances during the liturgical year;" plan and coordinate a comprehensive parish music program; plan the music for weekly liturgies, graduation, confirmation and seasonal reconciliation services; and invite, train and schedule volunteers for liturgical ministries.

In denying the petitioner, the director stated:

> [T]he petitioner acknowledged that the beneficiary volunteers her time on church music activities. It is given that activities that are traditionally performed by volunteer members of the congregation, as part of the practice of their religious beliefs, do not constitute "traditional religious function" and "religious occupation."

The petitioner does not specifically address this issue on appeal. However, regarding the beneficiary's employment as a music teacher, [redacted], the petitioner's pastor, stated:

> In as much as the beneficiary was initially employed as an H1B employee, the majority of her functions and job descriptions, specifically because she is a Music teacher in a Catholic school, relate to a traditional religious function. At the pinnacle of this faith formation is the Holy Eucharist, the source and summit of the Catholic faith in which liturgical music comprises a very integral part . . .
>
> By Church standards of course, ministry is generally perceived as voluntary involvement to a function or cause as compelled by a moral scruple.

Nonetheless, the petitioner provided no documentation that the duties of the proffered position are recognized as a religious occupation within the Catholic Church or that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. The position description provided appears to be tailored specifically to the beneficiary and the record does not indicate that the position was previously held by another individual within the petitioning organization or others within the Catholic denomination.

The petitioner has therefore failed to establish that the proffered position is a religious occupation or vocation as that term is defined by the regulation.

The second issue on appeal is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

> (4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:
>
> (i) The alien was still employed as a religious worker;
>
> (ii) The break did not exceed two years; and
>
> (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States.

> However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on June 24, 2008. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

> *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:
>
> (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
>
> (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
>
> (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.
>
> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The beneficiary's résumé reflects that from January 2004 to May 2008, she worked as a teacher for the Santa Barbara Catholic School where she taught music for kindergarten through 8th grade, served as an accompanist and music director for the honor choir at the school, and served as music director for the performing arts at the school during Christmas and spring plays. In a June 2, 2008 letter, the petitioner, through [redacted] stated that the beneficiary had been an employee of its school since 2004 and that:

> Aside from teaching Music across all grade levels, she has also contributed her musical talent generously as the school's Musical Director and Orchestra Conductor in all its annual spring musicales since she joined our school. More importantly, she also served as the choir director of the Santa Barbara Catholic School Honor Choir who regularly sings for the 8:00 A.M. Sunday masses. This entailed weekly research, planning, preparation, and rehearsal of appropriate liturgical songs to be sung by the choir for Sunday masses according to the Catholic Church's different Liturgical seasons.
>
> This year, [the beneficiary] has agreed to extend the scope of her ministry, service, and musical expertise to all other choirs of the parish as the Director of Liturgy and Music. In close coordination with me, and under my supervision and guidance, she is responsible for facilitating the worship life of the parish community by coordinating and providing quality liturgical experiences which celebrate and strengthen the memberships' journey of faith.

The petitioner provided copies of the beneficiary's pay slips for May 26, 2006, May 28, 2007, and March 15, 2008 through May 22, 2008. In denying the petition, the director noted:

> [The] beneficiary was admitted to the United States not as [a] religious worker (R1) but as a specialty occupation worker (H1B). Although the beneficiary generously offered her talent and time working as musical director and orchestra conductor for the school musicales, her main duties and purpose of admission remained the same, that of a school music teacher in a specialty occupation. Although she religiously served as the choir director of the Santa Barbara catholic school honor choir, her admission and purpose of entry into the United States remained to be that of music school teacher. Under no circumstances did the beneficiary serve[] as a religious worker or have been working in one of the positions described in paragraph (m)(2) of this section.
>
> . . .
>
> Although the petitioner emphatically assumes that the beneficiary was employed as a religious worker, the regulation is specific . . . The beneficiary was never employed as a religious worker nor authorized to work as a religious worker. Secondly, the beneficiary was never employed in the context of compensated for work for any religious organization. And because the beneficiary was never authorized employment in the United States, the petitioner further failed to establish that the beneficiary [has] for at least the two-year period immediately preceding the filing of the petition continuously been working in one of the positions described in paragraph 204.5(m)(2).

> The petitioner failed to reflect that the beneficiary was hired as a music school teacher and not as a religious worker. Also, the petitioner acknowledged that the beneficiary volunteers her time on church music activities.

On appeal, the petitioner stated that on March 6, 2008, it petitioned for a change of status for the beneficiary from H1-B nonimmigrant specialty worker to R-1 nonimmigrant religious worker, which was approved with an effective date of June 1, 2008 to May 31, 2011. The petitioner submitted a copy of the May 22, 2008 Form I-797A in which USCIS approved the change of status. However, this change of status was effective on June 1, 2008, only 23 days before the petition was filed. Therefore, the beneficiary's R-1 status was not effective for the full two years immediately preceding the filing of the petition.

Nonetheless, the director's conclusion that the beneficiary's qualifying work in the United States must be pursuant to R-1 status in error. The regulation provides that the beneficiary's qualifying work in the United States must be in a lawful immigration status. The record contains a copy of the beneficiary's Form I-94, Departure Record, which reflects that she entered the United States on July 29, 2007 in an H-1B status. Her status was valid until October 5, 2009. The May 22, 2008 Form I-797A notified the petitioner of approval of the request to change the beneficiary's status to R-1 effective on June 1, 2008. The record does not reflect that the beneficiary worked in the United States in an unauthorized status during the qualifying period. We, therefore, withdraw this portion of the director's decision.

The petitioner, however, has failed to establish that the beneficiary continuously worked in a qualifying occupation for the two years immediately prior to the filing of the petition.

As previously discussed, the petitioner stated that the beneficiary taught music at its school for kindergarten through 8th grade. The petitioner also stated that the beneficiary "contributed her music talent generously as the school's Musical Director and Orchestra Conductor in all its annual spring musicales since she joined our school" and served as the choir director for its honor choir that "regularly sings for the 8:00 A.M. Sunday masses." On appeal, the petitioner states:

> It is important to establish that unlike other schools, the primary thrust of Catholic education is faith formation. At the forefront of the core curriculum is the Religion subject and all its co-curricular activities. All other major and special subjects adhere closely to this thematic teaching.
>
> In as much as the beneficiary was initially employed as an H1B employee, the majority of her functions and job descriptions, specifically because she is a Music teacher in a Catholic school, relate to a traditional religious function. At the pinnacle of this faith formation is the Holy Eucharist, the source and summit of the Catholic faith in which liturgical music comprises a very internal part. The beneficiary played a great part in this traditional religious function serving as the choir director for the school's honor choir.

The regulation at 8 C.F.R. § 204.5(m)(4) provides that to be eligible for classification as a special immigrant religious worker, the alien must have been working in one of the positions described in 8 C.F.R. § 204 (m)(2) as a minister or in a religious vocation or occupation. As discussed above, the regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as an occupation that primarily relate to a traditional religious function, is recognized as a religious occupation within the denomination, and primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. While the petitioner asserts that a music teacher in a Catholic school meets this criterion, it submitted no documentation to support this position. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner submitted no documentation that the duties of a music teacher within the Catholic educational system primarily relate to and involve carrying out the religious beliefs of Catholicism. Accordingly, the petitioner has not established that the beneficiary worked in a religious occupation for the two years immediately preceding the filing of the petition.

In addition, the petitioner failed to provide evidence of the beneficiary's compensation as required by the regulation. The petitioner submitted copies of pay slips indicating that it paid the beneficiary for one month in 2006, 2007 and three months in 2008. The petitioner did not submit any IRS documentation as required by 8 C.F.R. § 204.5(m)(11).

The petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

> Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the IRC of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

> *Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:
>
> > (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner submitted a copy of a certificate of tax exemption from the government of Guam and a copy of an August 9, 1991 letter from the IRS to the United States Catholic Conference, advising that the organization had been granted a group exemption under section 501(c)(3) of the IRC. The petitioner, however, submitted no documentation to establish that it is covered under the group exemption granted to the Catholic Conference. The petitioner has therefore failed to establish that it is a bona fide nonprofit religious organization within the meaning of the regulation.

The petitioner also failed to provide the attestation required by the regulation at 8 C.F.R. § 204.5(m)(7).

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de*

novo authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.