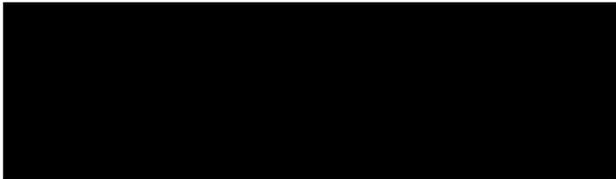


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



C<sub>1</sub>

Date: **OCT 25 2011** Office: CALIFORNIA SERVICE CENTER

FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner seeks classification of 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 its minister of music. In its decision on certification, 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 the two years immediately preceding the filing of the visa petition.

The petitioner provides no additional documentation on certification.

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 certification is whether the petitioner has established that the position qualifies as that of a religious occupation.

In its March 8, 2007 letter submitted in support of the petition, the petitioner, through Reverend [REDACTED] its Latino ministry director, stated that in the proffered position, the beneficiary “will be responsible for ministerial responsibilities such as directing, music program in church and teaching, counseling, [and] leadership training new ministers of music.” The petitioner further stated that the beneficiary would spend more than 40 hours per week performing the duties of the position and would receive a \$20,000 yearly salary plus housing and utility expenses. The petitioner submitted no other documentation about the proffered position.

In a request for evidence (RFE) dated September 4, 2007, the director instructed the petitioner to submit additional documentation about the proffered position, specifically:

What is the beneficiary’s job title? Provide a detailed description of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function.

In a November 18, 2007 letter submitted in response, the petitioner outlined the beneficiary’s duties as:

Friday – general praise band rehearsal. The petitioner stated that the beneficiary was responsible for setting up all of the equipment.

Sunday – regular service. The petitioner stated that the beneficiary was responsible for setting up all of the audio and video and was responsible for the technical operation and recording.

Monday and Thursday – The petitioner stated that the beneficiary was responsible for the selection of recorded material “and edition work” and post production of the recorded material.

Wednesday – The petitioner stated that the beneficiary was responsible for “drum machine programming” for the songs to be performed at the next services.

The petitioner further stated that from Monday to Wednesday, the beneficiary worked at home using his personal recording equipment.

In another letter dated November 18, 2007, the petitioner stated that the beneficiary had worked for the petitioning organization since April 30, 2004 and had served as media music director responsible for media tech support and audio for all church regular services. It stated that the beneficiary’s duties include installation and operation of all audio systems, support and

maintenance of all video and audio systems, and audio digital recording and editing of the regular services.

The director denied the petition, determining that the petitioner had not established that the proffered position related to a traditional religious function. The petitioner submitted no additional documentation in support of its appeal filed on January 15, 2008.

Pursuant to requirements under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), USCIS issued new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). In keeping with this requirement, the AAO remanded the petition to the director on December 15, 2008, to give the petitioner an opportunity to meet the new requirements.

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.

On February 4, 2009, the director notified the petitioner of her intent to deny the petition and gave the petitioner it had thirty days in which to submit additional documentation. The petitioner did not respond to the notice of intent to deny (NOID) the petition and submitted no additional documentation on certification.

The petitioner has failed to submit documentation to establish that the duties of the proffered position is a traditional religious function and is recognized as a religious occupation within its denomination, and that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

Accordingly, the petitioner has failed to establish that the proffered position is a religious occupation within the meaning of the regulation.

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

The USCIS 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 [Wage and Tax Statement] 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 petition was filed on April 16, 2007. Therefore, the petitioner must establish that the beneficiary worked in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

As discussed above, the petitioner stated that the beneficiary began working for the petitioning organization on April 30, 2004. The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary was present in the United States pursuant to an R-1, nonimmigrant religious worker visa that expired on April 12, 2007. The petitioner submitted a copy of a December 20, 2004 Form I-797, Notice of Action, approving the beneficiary

to work for Valley Stream Spanish Church in West Hempstead, New York in an R-1 status from April 30, 2004 through April 12, 2007. The petitioner submitted no other documentation to establish the beneficiary's qualifying work experience.

In her RFE of September 4, 2007, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning April 17 2005 – April 17, 2007 only. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted a November 18, 2007 "experience letter," in which it reiterated that the beneficiary had worked for the petitioning organization since April 30, 2004 as its music media director, and that his duties included installation and operation of all audio systems, support and maintenance for a 1 audio and video systems and digital recording and editing of regular services messages. Although the petitioner stated that it was also submitting the beneficiary's tax documentation, no such information is included in the record.

The director determined that the petitioner had failed to establish that the beneficiary worked in a full-time position and therefore failed to establish that he worked continuously in a qualifying religious occupation or vocation for the two-year qualifying period.

The petitioner submitted no documentation in support of the appeal, in response to the NOID or on certification.

The petitioner has submitted none of the documentation required by the regulation at 8 C.F.R. § 204.5(m)(11). The petitioner has therefore failed to submit sufficient documentation 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 failed to establish how it intends to compensate the beneficiary. In response to the RFE, the petitioner submitted an unaudited copy of its treasurer's report for the fiscal year April 1, 2006 to March 31, 2007. The report shows a deficit of \$19,446.96 for the period.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner provided no documentation that it has paid the beneficiary in the past. The petitioner has submitted no verifiable documentation of how it intends to compensate the beneficiary.

Further, the petitioner has failed to meet the requirements of the regulation at 8 C.F.R. § 204.5(m)(7), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

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 AAO will affirm the certified denial for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The director’s decision of June 4, 2009 is affirmed. The petition is denied.