

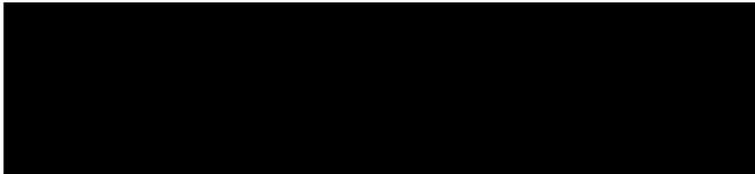
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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



C1

DATE: **FEB 17 2012** Office: CALIFORNIA SERVICE CENTER

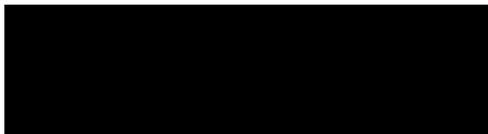
FILE

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:



INSTRUCTIONS:

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 on February 12, 2010. The petitioner filed a motion to reopen or reconsider on March 12, 2010. The director dismissed the motion on March 19, 2010. The petitioner appealed the matter to the Administrative Appeals Office (AAO) on April 19, 2010. The appeal will be dismissed.

The petitioner is church that seeks classification for 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), as a director of music. The director determined that the petitioner had not established its ability to compensate the beneficiary or that a director of music constitutes 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 issues on appeal are whether the petitioner has established its ability to compensate the beneficiary and whether a director of music constitutes a religious occupation.

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 [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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 stated that it would pay the beneficiary \$43,200.00 a year. The beneficiary purportedly began working there in June of 2009 according to a September 3, 2009 letter from the petitioner. In the letter, the petitioner stated that the beneficiary was already earning his proffered wage of \$43,200.00.

In her February 12, 2010, 2010 decision, the director noted that U.S. Citizenship and Immigration Services (USCIS) had sent the petitioner a Request for Evidence (RFE) on November 6, 2009, requesting documentary evidence of how it intended to compensate the beneficiary. The director noted in her decision that there is no wage history. The director concluded that the record of proceeding contained insufficient evidence to establish that the petitioner has the ability to pay the beneficiary the proffered wage.

With its March 12, 2010 motion, which the director dismissed on March 19, 2010, the petitioner submitted a letter from its Certified Public Accountant (CPA), [REDACTED] dated March 3, 2010. The letter states that church membership has increased from 380 members in 2007 to 540 in 2010 and that income has accordingly increased from approximately \$40,000.00 to \$90,000.00 during that time period. The CPA states that the petitioner therefore is able to pay the religious worker salary of the beneficiary. The CPA asserts that the church maintains unrestricted assets, so they may use their funds however they deem appropriate. The CPA states that the church additionally owns its sanctuary and always pays its bills on time. The petitioner submitted a copy of this same letter with its April 19, 2010 appeal.

The petitioner's 2007 financial statement reflects that the petitioner paid \$58,750.00 for an officer salary and \$50,216.00 in other salaries that year. The attestation section of the petition states that there were at least three other employees working for the petitioner. The petitioner has failed to demonstrate how the funds that it budgeted would be able to cover all of these salaries.

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) requires the petitioner to submit the beneficiary's IRS Forms W-2 if they are available. If not, a petitioner must provide an explanation for their absence. The beneficiary was purportedly working for the petitioner during the qualifying two-year period, but the petitioner has failed to explain why it has not provided any W-2s. The petitioner indicated that the beneficiary was already purportedly earning the full proffered wage as of September 3, 2009.

A petitioner must establish the elements for the approval of the petition at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). The petitioner has not demonstrated that it

previously paid the beneficiary the full proffered wage of \$43,200.00. Furthermore, the petitioner has also not demonstrated that it has realistically budgeted the funds required to do so in the future. Accordingly, the AAO finds that the petitioner has failed to meet the requirements of 8 C.F.R. § 204.5(m)(10).

The second issue in contention is whether the petitioner seeks to employ the beneficiary in a religious occupation, which the USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines 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 same regulation contains the following relevant 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.

In a letter dated March 9, 2010 accompanying the petitioner's March 12, 2010 motion to reopen or reconsider, [REDACTED] er Bonadie stated that religious music and spiritual songs are an integral part of his church's worship services. He explained that Caribbean-African music unites congregants and imparts Christian doctrines. Thus, he asserts that the beneficiary will not be

performing secular work, but purely religious functions as the director of music. He further states that music will attract new members and enhance current members' spiritual growth.

The petitioner had previously submitted a description of the beneficiary's position. The document states that the director of music coordinates and leads music at the petitioner's church to enhance the worship experience of the congregation. The document further delineates the beneficiary's responsibilities which include:

- meeting the scriptural requirements of church leadership,
- spending time in prayer and intercession daily,
- spending time in God's word daily,
- assisting the senior pastor in planning services and selecting music,
- directing music groups and congregational singing,
- coordinating rehearsals and performance schedules of music groups,
- supervising the maintenance of and additions to the music library,
- keeping informed on current music methods, materials, promotion, and administration,
- staying current with ministry trends,
- attending staff meetings and retreats,
- participating in church services regularly,
- directing instrumentalists,
- cultivating and training children and youth musicians, and
- enhancing worship and engaging the community.

On appeal, the petitioner again submitted a copy of the petitioner's bylaws, which includes music among its primary areas of focus. The other primary areas of focus include youth, Christian education, and outreach ministry. Thus, the petitioner's governing documents do, in fact, establish the need for a position of director of music. The petitioner additionally submitted a weekly schedule for the director of music. The schedule includes time spent in worship services, rehearsals, practice, administration, meetings, education, and personal growth and development. The petitioner submits a copy of its mission statement, which states the petitioner's emphasis on music by means of its cathedral choir, youth choir, children's choir, chorale, orchestra, and band.

The director denied the petition on February 12, 2010, stating that, the mere fact that an individual is a member of a religious denomination working within its facility does not establish that the job relates to a traditional religious function. The director found that the beneficiary would be involved in primarily secular activities, not religious ones.

The AAO finds that the petitioner has sufficiently described the integral role that the beneficiary's musically oriented activities play in the petitioner's worship services. The available evidence indicates that the beneficiary's work as director of music is an integral part of the petitioner's church services.

The significantly revised regulations at 8 C.F.R. § 204.5(m), published on November 26, 2008, do not state or imply that a religious occupation must "require religious training or education beyond that of a

devout member of the belief.” The regulation at 8 C.F.R. § 204.5(m)(7)(ix) requires the petitioner to attest that the beneficiary is qualified for the position sought, but the regulations impose no minimum threshold as to what the qualifications may be. The key test is the nature of the duties, rather than the nature of the alien’s preparation for those duties. Accordingly, contrary to the decision of the director, the AAO finds that the beneficiary’s position of director of music does constitute a religious occupation.

Beyond the decision of the director, the petitioner has not properly executed the Form I-360 petition. Part 10 of the form contains no signature of the petitioner attesting to the veracity of the listed information. Only counsel for the petitioner signed the form at part 11, attesting that he had prepared the petition.

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

*Filing petition.* Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 204.5(a)(1) provides that a petition is properly filed if it is accepted for processing under the provisions of 8 C.F.R. § 103. The regulation at 8 C.F.R. § 103.2(a)(2) provides:

*Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

An earlier version of the regulation at 8 C.F.R. § 204.1(d), as in effect in 1991, provided, in pertinent part:

Before the petition may be accepted and considered properly filed, the petitioner *or authorized representative* shall sign the visa petition (under penalty of perjury) in the block provided on the form.

(Emphasis added.) 8 C.F.R. § 204.1(d) no longer includes language that would allow an authorized representative to sign a petition, although the AAO acknowledges that this provision now relates only to immediate relative and family based petitions. In contrast, the filing requirements for

employment-based immigrant petitions are now found at 8 C.F.R. § 204.5(a). The regulation at 8 C.F.R. § 204.5(a)(1) provides that such petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. As stated above, the regulation at 8 C.F.R. § 103.2(a)(2) provides that the petitioner must sign the petition and does not include the “or authorized representative” language that previously applied to applications until 1991. Had the legacy Immigration and Naturalization Service (INS), now USCIS, intended to continue to allow authorized representatives to sign petitions, the language expressly allowing them to do so would not have been removed.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because the petitioning U.S. employer did not sign 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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied 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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.