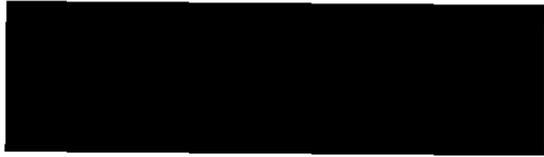


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C1

Date: NOV 03 2012

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Roman 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 religious worker in charge of liturgical music for church worship and teaching the faith through Christian music in schools. The director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious occupation.

On appeal, the petitioner submits letters from the Vicar General of the Archdiocese of Agana, the Archdiocesan Finance Officer, and the Archdiocesan Superintendent of Catholic Schools. The petitioner also submits copies of pages from the Code of Canon Law, pages from a publication entitled "Lay Ministries," an excerpt from the Catholic Encyclopedia regarding "Ecclesiastical Music," copies of two "Missal" pamphlets from 2012, excerpts from "Catechism of the Catholic Church," and copies of documents already in the record.

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 31, 2009, 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 31, 2009, 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 basis for denial relates to whether the beneficiary's work is a religious occupation.

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

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 the Form I-360 petition, filed on August 4, 2011, the petitioner indicated that the beneficiary will be working at both the [REDACTED] and [REDACTED] and that, while she receives hourly wages for her work at the school, her "services to the Parish are free of monetary compensation." In a letter accompanying the petition, the petitioner stated the following:

Currently [REDACTED] is a full time teacher in religious music at the [REDACTED] and a choir director for worship music at the parish church of [REDACTED]. She is also actively involved in assisting the pastor at [REDACTED] in the spiritual formation of the members of the parish through training workshops on music liturgy and faith formation on a regular basis during weekends. Her main work is service of the Church through music ministry.

In a document entitled [REDACTED]” also submitted with the petition, the petitioner indicated that the beneficiary works Monday through Friday from 7:30 am to 4:30 pm at the Dominican Catholic School performing the following duties: “Music classes; school choir for liturgical worship.” The schedule additionally lists weekly and monthly hours spent on “liturgical worship” and as “choir directress and organist for Mass” at [REDACTED], and as “Organist and Liturgical Animator” at [REDACTED]. The schedule also included the following statement:

Although the Beneficiary has this work schedule, nevertheless, at times, the parish may call on the Beneficiary for some extra unscheduled church liturgical event/function. These are some unexpected events to which the Beneficiary responds by her dedication to serve the Church without any monetary compensation. Her monetary compensation for the hours of teaching at the Dominican Catholic School is all the Beneficiary wishes to be able to continue her service to the Church. She has refused all monetary compensation from the church and the parish for her service in choir and liturgical worship.

The petitioner submitted copies of six paystubs from the [REDACTED] to the beneficiary for the period from March to May of 2011. The petitioner also submitted copies of the beneficiary’s Forms W-2GU (Guam Wage and Tax Statements) and federal tax returns for the years 2008 through 2010. While the Forms W-2GU were essentially illegible, the 2010 form appears to be from the [REDACTED]

On November 18, 2011, the director issued a request for evidence (RFE), in part instructing the petitioner to submit additional detailed information regarding the proffered position. The notice also instructed the petitioner to submit evidence “that the duties primarily relate to a traditional religious function and that the position is recognized as a religious occupation within the denomination.”

In a letter responding to the RFE, the petitioner again noted that the beneficiary’s service to the church is voluntary while her work teaching at the [REDACTED] is compensated:

Although the beneficiary serves the Church primarily as a religious worker on volunteer service in music ministry, she supports herself with the monetary compensation she receives from her work as a teacher at the [REDACTED]

School where she trains the students in liturgical music, sacred music choir and teaching the faith and worship through music.

In the letter, the petitioner listed the following “specific job duties:”

- (1) teaching the faith and awareness of the need for praise and worship of God through the ministry / use of music
- (2) Training members of the parish / schools in church and liturgical music
- (3) Encouraging interest and training persons for church choirs
- (4) Dedicated and sincere involvement in service of God through music

The petitioner also stated the following:

The duties of the proffered position primarily relate to a traditional religious function and the position is recognized as a religious occupation as can be seen even in present time that worship is always done with music in hymns and songs of praise in liturgical worship and the celebration of the Eucharist in solemnity.

The duties of this proffered position relate primarily and clearly involve the carrying out of the aim/goal/purpose of rendering homage and worship. In the Catholic Church, worship is done with music either by church choirs, vocal renditions of sacred songs, the use of music instruments (organ, piano, flutes, etc.). It is an integral and essential part of our worship and an apt way of praising and worship God through hymns and psalms and chanted prayers. ...

The religious workers like the beneficiary who work in music ministry are engaged in the ‘occupation’ or work of worship using music to praise and thank the Lord God for all the good gifts He showers on us all. **This is a religious occupation in that it is a work that is fully done with dedication in the service of God and not merely a work towards a salary or a gainful employment.** This is a religious function and a serious task undertaken with the view and aim of serving God through the Church.

(Emphasis in original). The petitioner submitted a letter from the [REDACTED] which stated that the beneficiary had worked at the school since August 2006 and attested that the beneficiary is “a Music Teacher and religious worker actively doing Music Ministry.” The letter stated that the beneficiary’s “work as a religious worker included the formation of the [REDACTED] Choir which actively serves the parish church of [REDACTED] as well as [REDACTED].” The letter did not provide details about the nature of the beneficiary’s schedule or duties as a music teacher at the school.

A separate letter from ██████████ stated that the beneficiary “is actively involved as a volunteer religious worker” at the church, serving “as a choir director and pianist for Liturgical/Eucharistic services.”

The petitioner resubmitted documentation of the beneficiary’s Bachelor’s degree in English with a minor in music education and submitted documentation that the beneficiary holds a Master’s degree in teaching.

On March 13, 2012, the director denied the petition, finding that the petitioner failed to establish that the prospective position qualifies as a religious occupation under the regulations. Regarding the beneficiary’s role as choir director and pianist in the church, the director acknowledged that music is a traditional part of worship services in many denominations but found that, in order to rise to the level of a religious occupation, a position must traditionally be a permanent salaried position within the denomination rather than a role filled by volunteers from among the congregation. Regarding the beneficiary’s role as music teacher, the director found that the petitioner had not established that the duties of a music teacher are primarily religious rather than secular in nature and also noted that the petitioner had not submitted documentation that the position of music teacher is recognized as a religious occupation within the denomination.

On appeal, the petitioner argues as follows:

The duties performed by the beneficiary are primarily related to traditional religious function & recognized as a religious occupation within the denomination (Catholic Church). The beneficiary’s duties as organist, choir leader/director in the parish in music ministry: (See attached documentary evidence: (1) Historical Account of Ecclesiastical Music along past centuries; (2) Copies of Missal, Music books for Worship|..)]

The beneficiary’s duties are primarily related to and clearly involve inculcating and the carrying out of the religious creed and beliefs of the denomination (Catholic Church). The duties are integral & essential part of religious worship carrying out the creed/beliefs through activities of worship. Music is an integral part of worship and is recognized as such by the denomination as a salaried permanent position. (See attached letters from the governing officials attesting to music as a part of traditional religious occupation in worship, and as part of creed/beliefs of the denomination.)

(Emphasis in original). In a letter submitted on appeal, the Vicar General of the Archdiocese of Agana states the following:

The duties of the beneficiary are [an] integral and essential part of religious worship, carrying out the religious creed and beliefs of the denomination. These

activities/duties are essential activities of worship performed according to the beliefs/tenets of the denomination (Universal Catholic Church).

Music being an integral part of traditional religious function, is recognized as part of the traditional religious function in carrying out the worship activities indicated in the beliefs and tenets of the denomination (the Catholic Church), and the performance of duties to such activities of traditional religious function, is also considered as a salaried permanent position by the governing body of the denomination (the Catholic Church), although, persons may, due to personal conviction of dedication, offer service and choose not to accept financial compensation for the performance of such services/duties.

(Emphasis in original). The Vicar General additionally states:

As worship services in any church or religion, be it the universal Catholic Church or Protestant, or any other religious denomination, do not take up any continuous 24-hour time each day, so the duties of the beneficiary in church worship as organist or choir leader/director in the Church, do not and cannot involve a 24-hour span for duties.

For this reason, the beneficiary's duties in her work as organist and choir leader/director appears trivial and not "full-time". For her services to the Church to be "full-time," the beneficiary uses the rest of her hours of the day, to serve the Catholic Church, by "teaching the Faith" through music in a catholic school, the [REDACTED] across from the parish/church. Here, she trains students in Christian music for Mass and liturgical activities of worship.

Her duties as a music teacher are also not "full time" and cannot be a 24-hour full-time work, since the instructional day at school needs to carry out the teaching of other non-religious academic subjects. The beneficiary's teaching music classes at the Dominican Catholic School five days a week, is also not a full 8-hour school day either. It is just enough time with the instructional school day, to allow the beneficiary time to teach the Faith and worship of God using liturgical and sacred choir music.

The beneficiary's duties are not academic by nature, but mainly more of a religious nature in that the focus and emphasis is in teaching the students the worship of God through the use of music, and to prepare and train them to participate fully with music, at Holy Mass which is the supreme form of Church worship.

The description above of the duties of the beneficiary as a music teacher is a way of clarifying and describing just what she does in the performance of her duties to be in line with the requirements of the position of service to the Church using music

which is an integral and essential part accompanying liturgical activities of worship within the Catholic Church.

The petitioner also submits a letter from the Finance Officer of the Archdiocese of Agana, which asserts that the beneficiary's position in music ministry in the church is permanent and salaried position within the Catholic Church. He further states:

Since the beneficiary has by personal commitment and choice refused a salary for this permanent position in music ministry, her music classes at the Dominican Catholic School are financially compensated to enable her to have a secure source of income to support herself.

An additional letter from the Superintendent of Catholic Schools in the Archdiocese of Agana attests to the importance of music in Catholic worship and liturgical functions and therefore asserts that the beneficiary's duties are related to a traditional religious function. The petitioner also submits additional materials relating to the important role of music in Catholic worship.

The AAO notes that the petitioner initially listed the title of the proffered position as "Religious worker in charge of liturgical music for church worship & teaching the Faith through Christian Music in schools." Materials submitted with the petition and subsequently have consistently described the beneficiary's current and prospective work as consisting of two distinct roles: that of a compensated music teacher at [REDACTED] and that of a volunteer worker in the music ministry who serves in part as a pianist and choir director at [REDACTED] Church/Parish. Although the petitioner seeks to include the beneficiary's duties as a volunteer as part of the proffered position, the petitioner has repeatedly indicated that the beneficiary will only be compensated for her work as a teacher at [REDACTED] and will perform her services to the parish on a volunteer basis. Accordingly, the only compensated position being offered to the beneficiary is that of a music teacher at [REDACTED].

Regarding the beneficiary's role as a volunteer within the parish, the regulation at 8 C.F.R. § 204.5(m)(2) requires that an alien be coming to the United States to work in a qualifying, compensated position. The petitioner has consistently asserted that the beneficiary has not been and will not be compensated for her services to the parish, but will support herself through the compensation she receives for her work as a teacher. The petitioner has submitted evidence to show that the beneficiary's duties as a pianist and choir director relate to the traditional religious function of worship through music and the petitioner asserts on appeal that her position in music ministry is traditionally recognized as a permanent, salaried religious occupation within the denomination. However, because the beneficiary is essentially a lay worker and will not be compensated for this work, the position cannot be considered a qualifying position under the regulations.

The petitioner asserts on appeal that the beneficiary's duties as a music teacher are not primarily academic but rather religious in nature. However, the petitioner has not submitted documentary evidence in support of this assertion. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The schedule submitted by the petitioner listed only "Music classes" and "school choir for liturgical worship" as the beneficiary's duties at the school, without providing details of the nature of her teaching duties or breakdown of the time spent performing religious versus administrative or secular work. Further, although the schedule indicates that she works eight hours per day at the school, Monday through Friday, the letter submitted on appeal from the Vicar General states that the beneficiary does not work a full eight-hour day at the school. Therefore, it is not clear whether the beneficiary's position as music teacher will in fact be a full-time occupation. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Neither the letter from the [REDACTED] submitted in response to the Request for Evidence, nor the letter from the Superintendent for the Diocese, submitted on appeal, provide information about the subject material taught by the beneficiary or the specific nature of her duties to establish that her work is primarily religious and includes only limited administrative duties.

Further, the regulation at 8 C.F.R. § 204.5(m)(5)(A) requires that the beneficiary's duties "be recognized as a religious occupation within the denomination." The petitioner has not submitted sufficient documentary evidence to establish that the position of music teacher is recognized as a religious occupation within the denomination. Most of the documentation submitted on appeal relates to the role of music in Catholic *worship services*. The petitioner also submits a publication entitled "Lay Ministries," which discusses, among other roles, the roles of catechists (defined as "those who dedicate all or part of their time to the education in the faith of the children or adult Christians") and theology teachers in the church. However, as discussed above, the petitioner has not submitted sufficient evidence regarding the beneficiary's teaching duties to establish that she is primarily involved in teaching religion or theology.

For the reasons discussed above, the AAO agrees with the director's finding that the petitioner failed to establish that the proffered position qualifies as a religious occupation under the regulations.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.