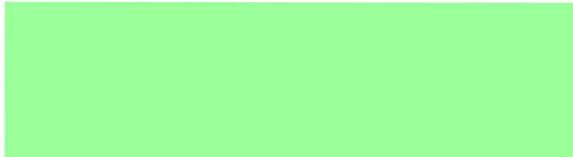


(b)(6)

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

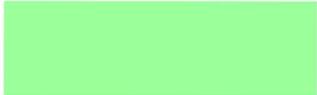


U.S. Citizenship
and Immigration
Services

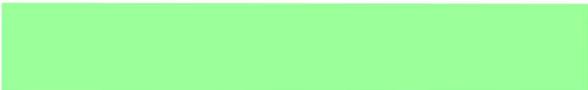


Date: JUN 11 2013

Office: CALIFORNIA SERVICE CENTER

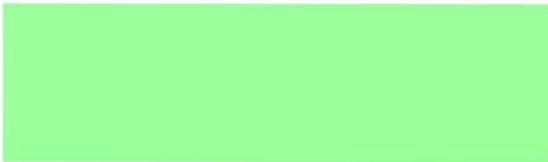


IN RE: Petitioner:
Beneficiary:



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.

Thank you,

Ron Rosenberg

Ron Rosenberg
Acting 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 appeal will be sustained and the petition will be approved.

The petitioner is a church. 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 an assistant minister of worship. The director determined that the petitioner failed to establish that the beneficiary will be employed in a qualifying religious occupation.

On appeal, the petitioner submits a letter from the petitioning organization, a copy of the constitution of the petitioning organization, an excerpt from the Church Administration Manual of the American Baptist Churches in the USA, and a copy of the petitioner's doctrinal statement.

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 U.S. Citizenship and Immigration Services (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 regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister. ...

Religious occupation means 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.

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

On the Form I-360 petition, Part 8, Employer Attestation, the petitioner stated that the beneficiary's title would be "Assistant Minister of Worship," and described his proposed daily duties as follows:

Present high caliber multicultural music program that appeals to young people and represents a conscious effort to maintain the rich multicultural diversity of our church. Compose, arrange, adapt music to be used at all worship services. Incorporate music into all portions of the service.

As a description of the beneficiary's qualifications, the petitioner stated on the petition that the position does not require ordination "as with the standard pastoral positions," but requires extensive music skills. The petitioner identified itself as affiliated with the denomination of [REDACTED]

The petitioner submitted a copy of its directory, which listed the beneficiary as "Assistant Music Minister." In a cover sheet entitled "Evidence pertaining to the minister position," the petitioner stated that the position of assistant minister of worship "can be understood as Assistant Music Director and does not require a special ordination as required for clergy members of pastoral ministry."

The petitioner submitted a document entitled "Assistant Minister of Worship Job offer and Description," dated March 29, 2012, which included the following duties:

1. Together with the Minister of Worship develop a quality program that enhances the worship experience.

1.1 Willing to provide constructive ideas to the pastoral/elders/deaconess for the total worship experience, participating in ministry meetings, and contributing to the annual budget;

1.2 Work with the Minister of Worship to select music to be used in all worship services, incorporating music: Prior to service, during prayer, during communion, offering and post-service;

1.3 Work with the Minister of Worship to rehearse praise team (choir/band) in preparation for worship services, special events and recordings.

2. Work with the Minister of Worship to present a high caliber multicultural music program that appeals to young people and represent a conscious effort to maintain the rich multicultural diversity at [REDACTED]

- 2.1 Must be proficient on keyboard instrument, e.g., piano;
 - 2.2 Must be proficient in a variety of music styles, e.g., traditional, contemporary, folk, ethnic;
 - 2.3 Be responsible for the band and develop a high caliber of musicians (such as brass, woodwind, strings player's etc.) to accompany the choir for an awesome experience.
3. Compose, arrange, adapt music to be used at all worship services, recordings, playbacks and soundtracks to CDs and DVDs:
- 3.1 Two Sunday morning services, Youth evening service;
 - 3.2 Christmas and Easter services, Thanksgiving Praise Festival, Christmas Eve service;
 - 3.3 Special event, e.g., concerts, international day, weddings, funerals.
4. Be responsible for the audio enhancement (mastering) of weekly service recordings (preaching) and videos (Pastor's corner) to be posted on the website.
5. Possess leadership qualities that attract and gain respect of all band and choir volunteers
6. Back up the Minister of Worship in rehearsal and worship services when the Minister of Worship is not available.
7. Without compromising your duties and responsibilities to this church, you may use your ministry gifts for the edification of God's Kingdom outside the boundaries of this church.
8. Participate, collaborate and work together with other ministries of the church.

The petitioner additionally submitted a "Time Requirements Worksheet," also dated March 29, 2012, setting forth 35 hours per week of duties including: "Time spent in worship services," "Rehearsals," "Piano practice," "Arrangement creation/transcription/writing notation per service," "Audio mastering," "Composing, arranging and Recording original songs for CBC," and "Paid lunch period." The document also set forth "Extra Duties" and duties related to the petitioner's "Easter/Christmas Celebration and DVD."

On August 21, 2012, USCIS issued a Request for Evidence (RFE) in part requesting additional evidence regarding the proffered position. The notice specifically instructed the petitioner to submit "a daily work schedule, from Monday thru Sunday, for the beneficiary with the detailed description of the work to be done, specific job duties, level of responsibility, number of hours per day performing the work duties."

In response to the RFE, the petitioner submitted a chart of the beneficiary's weekly work schedule, showing blocks of time devoted to various duties consistent with the "Time Requirements Worksheet" previously submitted. The petitioner also resubmitted a copy of the "Job offer and Description."

Although the petitioner noted that it does not require any particular educational degree for the position, the petitioner submitted copies of the beneficiary's certificates and diplomas related to his musical training.

On January 4, 2013, the director denied the petition, finding that the petitioner failed to establish that the prospective position is a qualifying religious occupation. The director stated the following:

The beneficiary's duties do not relate to a traditional religious function. In this instance, the duties of the occupation do not have religious significance and embody the tenets of that particular religious denomination.

Although music is a component of the worship services of many religious denominations, there is no inherent requirement that a person involved in the musical portion of a service be a member of the employer's denomination or that he or she participate in the worship service. These duties are not necessarily dependent on any religious background or prescribed theological education.

Here, the petitioner has not shown that the duties of the position are directly related to the religious creed or beliefs of the denomination, or that the position is defined and recognized by the governing body of the denomination.

In a letter submitted on appeal, the petitioner states in part:

[REDACTED] is affiliated to [REDACTED]
[REDACTED] which has in the [REDACTED]
by [REDACTED]

[REDACTED] from page 49 to 54 [see attachment B]. This manual is a set of examples to be used as a base for church guidance and on page 50 item II. Qualification, states: "*The Minister of Music (worship) shall be a professionally trained musician and one who has experience with and appreciation for hymnody from the free church tradition. He/she shall be a person who senses the call of God to use his/her gifts by mobilizing the musical resources available in the church. The personal shall be capable of presenting a well rounded, balance approach to music in public worship, as well as ministering to the musical and spiritual needs of the participants.*"

As stated above the position of Assistant Minister of Worship is a leadership religious occupation in the ministry not only to the musical portion but to the **spiritual needs** of the participants over this ministry. The Worship ministry is the biggest participatory ministry of our church involving close to ¼ of the members of our congregation, between adult choir, young adult choir and band. It is therefore essential that the

leaders of this minister be devout Christians with a calling to a life of ministry and servitude, they must be sensitive to the calling of the spirit to minister effectively to the congregation in general as well as to the needs of the members of the ministry at a personal spiritual level.

The petitioner submits an excerpt from the cited "Church Administration Manual" highlighting the passage quoted above.

In the letter submitted on appeal, the petitioner describes the importance of music "in our beliefs and scriptural history," and lists several prominent music-based "worship ministries." The petitioner also notes relevant portions of its constitution, a copy of which is submitted on appeal and which was originally submitted at the time of filing. The petitioner highlights provisions relating to the requirements for members, officers, elders and pastoral staff members, including scriptural passages relating to faith and personal conduct.

Although in Part 2 of the petition, Classification Requested, the petitioner indicated that the beneficiary will be working as a minister, the AAO finds that the proffered position does not meet the definition of a ministerial position according to the regulations. The petitioner has consistently indicated that the position does not require "ordination as required for clergy members." Accordingly the issue to be discussed is whether the position qualifies as a "religious occupation" under the regulations.

To the extent that the director implied that a music ministry position within a religious organization is inherently secular and therefore not qualifying, or that qualifications for a religious occupation must involve a prescribed theological education, the AAO disagrees with these characterizations of the regulatory requirements. The regulations do not require a beneficiary to have any specific religious training in order to qualify as a religious worker, instead providing that the beneficiary must be qualified for the position "according to the denomination's standards." The definition of religious occupation under 8 C.F.R. § 204.5(m)(5) focuses on the nature of the duties of a particular position and on whether the denomination recognizes the position as a religious occupation. In the summary of the final rule, USCIS stated that it chose not to list examples of qualifying religious occupations in the regulations, instead requiring each petitioner to "demonstrate that the occupation relates primarily to a traditional religious function that is recognized as a religious occupation within the denomination." See 73 Fed. Reg. at 72276, 72281 (November 26, 2008).

The AAO finds that the excerpt from the Church Administration Manual, as well as the petitioner's explanation on appeal, is sufficient to demonstrate that the position "minister of music (worship)" is recognized as a religious occupation relating to a traditional religious function within the denomination of American Baptist Churches in the USA. Further, the beneficiary's duties, as listed on the "Job offer and Description" document accompanying the petition, were not merely technical or secular in nature, but instead focused on incorporating music to "enhance the worship experience."

Therefore, the AAO finds that the petitioner has established that the proffered position of assistant minister of worship is a qualifying religious occupation.

(b)(6)

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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 met that burden. Accordingly, the AAO will withdraw the director's denial decision and approve the petition.

ORDER: The appeal is sustained and the petition is approved.