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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
U.I.B., 3rd Floor
Washington, D.C. 20536

PUBLIC COPY



File: [REDACTED] (LIN 01 166 51796) Office: NEBRASKA SERVICE CENTER Date: JAN 10 2003

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: 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)

IN BEHALF OF PETITIONER:
[REDACTED]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 CFR 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Pentecostal church. It 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), in order to employ him as a director and pastor in charge of music at an annual salary of \$21,000.

The director denied the petition, finding that the petitioner failed to establish that the proffered position is a qualifying religious occupation.

On appeal, counsel for the petitioner argues that the proffered position qualifies as a religious occupation because music is integral to Pentecostal worship.

The director noted that in reply to a request for additional documentation, the petitioner included a new job description and job title. The director determined that the petitioner must establish eligibility as of the time of filing; hence, he evaluated the petition with the original job title and description. On appeal, counsel for the petitioner argues that the petitioner may amend the petition in response to a request for additional documentation. In review, counsel's argument is not persuasive. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. *Matter of Izumii*, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998). Accordingly, the petitioner has not overcome the director's objection.

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, 2003, 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, 2003, 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 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 petitioner in this matter is a Pentecostal church with headquarters in Lagos, Nigeria. It claims a membership of 500. The beneficiary is a native and citizen of Nigeria who was last admitted to the United States on February 21, 1996 as a nonimmigrant visitor (B-2).

In order to establish eligibility for classification as a special immigrant, the petitioner must satisfy several eligibility requirements.

A petitioner must establish that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

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.

The statute is silent on what constitutes a *religious occupation* and the regulation states only that it is an activity relating to a traditional religious function and provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion.

The Service interprets the term *traditional religious function* to require a demonstration that the duties of the position are directly related to the creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In this case, the petitioner asserts that the position relates to a traditional religious function because music is integral to Pentecostal worship.

After a review of the record, it is concluded that the petitioner has not established that the position of director and pastor in charge of music constitutes a qualifying religious occupation.

First, the petitioner submitted insufficient documentation that the position is a traditional full-time paid occupation in its denomination. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner failed to provide verification from an authorized official of the denomination that permanent salaried employment in such an occupation is a traditional function within the denomination. To establish that a position is qualifying as a religious occupation, that an alien is qualified in the position, and has been carrying on such a position, acceptable evidence includes a letter from a Superior or Principal of the denomination in the United States. See *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). In the instant case, the petitioning church wrote a letter indicating that the beneficiary is qualified in the position, and has been carrying on such a position since 1990. A letter from an official of the individual petitioning church is considered, but is not sufficient to satisfy the burden of proof.

Second, the petitioner failed to state the number of its employees, the size of its choir, and the number of worship services per week. Absent such information, the Service is unable to conclude that the position could reasonably be a full-time occupation with the petitioner.

Third, the duties of the position are not considered to constitute the duties of a qualifying religious occupation. Duties such as participating in the church's in [redacted] "evolve the music ministry into a record making [redacted] [redacted] establish] a touring musical group" are considered wholly secular duties not directly related to the religious practices of the church.

Finally, in reaching a determination on whether a position constitutes a religious occupation for the purpose of special immigrant classification, the Service must distinguish between

common participation in the religious life of a denomination and engaging in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. Such voluntary positions filled by members of a congregation are not considered religious occupations. The Service interprets its own regulations to hold that religious occupations are full-time paid positions requiring specific religious training. While participation with the church choir is a tradition in many denominations, there is no evidence that the instant position is a traditional full-time paid position with the prospective employer or its denomination at large. Therefore, it must be concluded that the petitioner has failed to establish that the proposed position constitutes a qualifying religious occupation.

Beyond the decision of the director, a petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

8 CFR 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

The petitioner must either provide verification of individual exemption from the U.S. Internal Revenue Service, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS.

In addressing this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated March 5, 1997, reflecting that a New York affiliate parish was granted tax-exempt recognition under section 501(c)(3) of the Internal Revenue Code (IRC).

There is no evidence that the petitioner is eligible for tax-exempt status through a denominations group tax exemption. There is also no evidence of a formal affiliation between the petitioning parish and the New York parish.

The burden of proof in these proceedings rests solely with the



petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.