U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

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File: [redacted] Office: Nebraska Service Center Date: AUG 18 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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)

ON 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 C.F.R. § 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 Bureau of Citizenship and Immigration Services (Bureau) 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 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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), in order to employ her as a church pianist at an annual salary of $21,000.

The director denied the petition, finding that the petitioner had failed to establish that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

On appeal, counsel for the petitioner asserts that there is no basis in the statute or regulations that the position requires the completion of prescribed courses of training, or that the duties of the position be directly related to the religious creed of the denomination. Counsel further asserts that there is no basis for the requirement that the position traditionally be a permanent, full-time salaried occupation within the denomination.

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 described as a church affiliated with the which is affiliated with the Evidence contained in the record reflects that the has the required tax-exempt status, and that the Illinois State Association received the petitioner into its fellowship in November 2000. However, there is no evidence contained in the record regarding the relationship of the to the

The petitioner states that its congregation includes 164 registered members as of the date of filing the petition. Financial information contained in the record reflects that the petitioner has four employees including a pastor, pianist, evangelist and children's pastor.

The beneficiary is a native and citizen of Korea who last entered the United States on December 12, 1997 as an R-1 nonimmigrant, with permission to remain until December 31, 2001.[1] The petitioner states that the beneficiary has been employed as a church pianist since her entry into the United States until the filing date of the petition at an annual salary of $18,000. However, no documentation, such as copies of the beneficiary's personal income tax statements or W-2 Forms, to support that claim is contained in the record.

The beneficiary's past and proposed duties are described as full-time. The petitioner has submitted examples of the beneficiary's past weekly work schedules showing the following activities: choir rehearsal, Saturday and Sunday (3.5 hours); piano-playing for worship, Wednesday and Sunday (4.5 hours); choir meeting, weekdays (2.5 hours); ministers weekly meeting, Sunday (2 hours); bible study, Wednesday (2 hours); practice, weekdays (20 hours); and other duties, weekdays (5 hours).

The petitioner states that the duties and functions of the proposed position include playing the piano/organ for church worship, church choir, and religious ceremonies such as weddings or funerals, as well as coordinating with the music director and choir conductor for special music programs.

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

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[1] An alien with at least two years membership in a religious denomination may qualify for nonimmigrant R-1 classification under section 101(a)(15)(R) of the Act without a showing of prior work experience. For special immigrant classification under section 101(a)(27)(C) of the Act, the alien must also establish at least two years of experience in the position being offered.

eligibility requirements.

At issue in this proceeding is whether the petitioner has established 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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the regulations. 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. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples.

The Bureau interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious 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 response to the director's request for additional documentation, the petitioner submitted a letter from [redacted] dated January 11, 2002, concerning the religious training necessary for the position. [redacted] stated:

1. For evidence of piano skill, one must have either completed at least 2 years of college level music/piano education or has prior experience as piano teacher or instructor for over 6 years.

2. For religious training, one must have completed a lay-minister training program or church leader training program for a minimum of 3 months.

3. For actual ministry experience, the church requires a

 [redacted]

> proven records [sic] of prior full-time ministry as church pianist for at least 2 years.

After a careful review of the record, it is concluded that the petitioner has failed to establish that the position of "church pianist" constitutes a qualifying religious occupation.

First, although the petitioner has stated that it has employed full-time church pianists in the past, no documentary evidence to support the claim that the position is traditionally a permanent, full-time, salaried occupation within the denomination has been submitted. Second, there is no evidence contained in the record to establish that the position is defined and recognized by the governing body of the denomination. Third, the petitioner has failed to establish that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

It is noted that more than half of the beneficiary's past duties have been described as "practice" or "meetings" with less than half spent performing the proposed duties of playing the piano/organ for religious worship, church choir, special ceremonies and programs. Furthermore, there is no indication that the position was advertised or that other candidates were considered. 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).

While the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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.