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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

AUG 1 2003

File: WAC 01 222 53325 Office: California Service Center Date:

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER: [redacted]

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 Acting Director, California 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"), in order to employ her as a music director at a monthly salary of $1,500.

The acting 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.

Upon submission of a Form I-290B, Notice of Appeal, counsel for the petitioner submits a written brief and additional documentation. Although counsel requested that the appeal be treated by the acting director as a motion to reopen and reconsider, the acting director did not accept the motion and forwarded the record of proceeding to the AAO to be treated as an appeal.

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 Korean American Presbyterian Church having over 5,000 congregation members of adults and children.

The beneficiary is a native and citizen of Korea who was last admitted to the United States on May 2, 2000 as an F-2 dependent spouse of a nonimmigrant student. The petitioner indicates on the Form I-360 petition that the beneficiary has not been employed in the United States without authorization.

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 Bureau interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined as recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning religious organization.

In this case, the petitioner asserts that the position is full time, that it requires two years of experience, and that music is a major part of its worship practices. In a letter dated April 2, 2001, the petitioner described the duties of the position as follows:

> [The beneficiary's] duties as Music Director include the planning and implementation of various church musical programs for nursery school students, youth groups, and

> the adult congregation.
>
> In cooperation with the education and choral department directors, [the beneficiary] will plan, coordinate, and accompany choir performances with musical instruments, and singing to develop special events for Easter, Thanksgiving, and Christmas.
>
> [The beneficiary] will also organize and lead the performances of solo, duet, and quartet, vocal Gospel teams. She will also organize and lead bands, and various musical programs developed for Retreats, and summer and [W]inter camps.
>
> [The beneficiary] will further assist the ministry staff to produce audio and video recordings of Church performances, which can then be forwarded for use by the various missionary programs sponsored by the Church.
>
> [The beneficiary] will also be required to confer frequently with Church pastors and ministry staff to assure that her efforts conform to the missionary goals of the Korean-American Presbyterian denomination.

On appeal, counsel states that a non-precedent decision has held that a position entitled "religious producer and director," involving the production of religious material, qualifies as a religious occupation. The decision cited by counsel has no precedential effect. Only decisions designated as precedents are binding on Bureau employees. *See* 8 C.F.R 103.3(c). Counsel asserts that the production of audio and video recordings of church services used for church-sponsored missionary work is an occupation that relates to a traditional religious function. Counsel further states that the position in this matter, which requires frequent consultation with clergy staff in order to assure that the performance of the job duties conform to the missionary goals of the denomination, also clearly relates to promoting the creed of the denomination.

With respect to counsel's objection to denial of this petition in view of the approval of a prior petition, it is noted that the Bureau is not required to approve applications or petitions where eligibility has not been demonstrated. This record of proceeding does not contain copies of the prior petition and its supporting documentation. If the prior petition was approved based on evidence similar to the evidence contained in this record of proceeding, however, the approval of that petition may have been erroneous. The Bureau is not required to approve a petition where eligibility has not been demonstrated, merely because of a prior approval that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither the Bureau nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084,

1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988). Moreover, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D.La.).

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

On appeal, counsel states that "employment experience" letters from various churches where the beneficiary has been employed establish that the position is recognized and governed by the denomination. We disagree.

The record contains no documentary evidence from an official of the Presbyterian denomination stating that the position is a traditional full-time paid occupation in its denomination.

The only letter submitted on appeal that can be considered to be from a Presbyterian official, is a letter dated April 9, 2002 from Rev. Micki Choi, Executive Presbyter of the Hamni Presbytery, Synod of Southern California and Hawaii, Presbyterian Church (U.S.A.). Rev Choi states that a mere musical background would not be adequate to the work that is required of the beneficiary, but does not verify that permanent salaried employment in such an occupation is a traditional function within the denomination. Further, there is no evidence contained in the record, in the form of pay records or other financial verification, that the petitioner has ever employed a person in this capacity in the past. There is no indication that the position was advertised or that other candidates were considered.

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 met that burden.

ORDER: The appeal is dismissed.