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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]

File: EAC 00 207 53455 Office: VERMONT SERVICE CENTER Date: JUL 03 2003

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The petitioner filed an untimely appeal, which the director treated as a motion to reopen. The director granted the motion to reopen and affirmed his prior decision. The petitioner appealed the director's decision and the appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion to reconsider. The motion to reconsider will be granted; the denial of the visa petition will be affirmed.

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 him as a church organist and choir director.

The petitioner filed a Form I-360 petition for special immigrant classification on June 21, 2000. The Vermont Service Center Director denied the petition in a decision dated July 30, 2001. The petition was denied on the grounds that the petitioner failed to submit sufficient evidence to establish that the proposed position is a qualifying religious occupation.

Counsel for the petitioner filed an appeal from the decision of the center director. The appeal was untimely, so the center director granted a motion to reopen and affirmed his initial decision denying the petition.

Counsel for the petitioner subsequently appealed the director's decision to the AAO. The AAO summarily dismissed the appeal in a decision dated June 20, 2002, finding that the petitioner failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel for the petitioner now files a motion to reconsider that decision arguing, in pertinent part, that the AAO erred in summarily dismissing the appeal and that the director's decision is contrary to law in that it rejects the petition on the basis that the proposed position must require specific training, when there is no such requirement in the law. Counsel for the petitioner further argues that the director's decision unlawfully discriminates against non-Jewish religious organizations.

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 is a church. The beneficiary is a native and citizen of the United Kingdom. The petitioner submitted evidence that it has the appropriate tax-exempt recognition. The evidence on the record indicates that the beneficiary last entered the United States on October 4, 1999 as an R-1 nonimmigrant religious worker.

The issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

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

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

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.

In this case, the petitioner asserts that the position of choir director and organist to be "an integral part of the worship and spiritual life of the congregation." The petitioner's Rector stated:

> Music is an important part of our worship activities... The Music program is coordinated with the theme of the service, and often proves the attraction for new members and the way that they become integrated into the congregation. The music program is a musical way of praising God, praying, thanking God for his gifts to use, and expressing our aspirations to follow in the footsteps of Christ.

After a review of the record, it is concluded that in this case the petitioner has not established that the position of "choir director and organist" constitutes a qualifying religious occupation.

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 and lists 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 job duties are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Bureau therefore 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 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 the instant case, the petitioner has failed to establish that the duties of the proffered position are directly related to the creed and practice of the petitioner's religion.

The petitioner has not established that the position of music director is a traditional permanent salaried position requiring a religious background at its facility or in the denomination at large. The petitioner has not provided a detailed description of the beneficiary's duties and their integral role in the church's worship services. Simply stating that the beneficiary "has developed a strong sense of the relationship between music and the Holy Scriptures, as well as experience in the pastoral care of parishioners, both children and adults," without further elaboration, is not sufficient for the purpose of meeting the burden of proof in these proceedings. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel for the petitioner also argues that the decision denying the petition "unlawfully discriminates against non-Jewish religious organizations, whose organists and choir directors are denied permanent visas when such visas are granted to cantors." Counsel's argument is not persuasive. The regulation lists examples of potential religious occupations including cantors. Not all cantors will qualify as religious workers. The Bureau must consider each petition on its individual merits. It is noted that the Bureau is not required to approve applications or petitions where eligibility has not been demonstrated. Each petition must be adjudicated based on the evidence contained in that record. *Sussex Engineering, Ltd. v. Montgomery,* 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied* 485 U.S. 1008 (1988); *Matter of Church Scientology Int'l.,* 19 I&N Dec. 593, 597 (BIA 1988).

Finally, counsel for the petitioner argues that the Bureau is bound by a 5th Circuit Court of Appeals decision, *Starkman v. Evans,* 198 F.3d 173 (5th Cir. 1999). Counsel failed to establish that the decision in Starkman has any bearing on the instant case. In Starkman, the court held that the choir director qualified as a minister for the purposes of the First Amendment's "ministerial exception." Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in the Starkman case.

In this case, the record does not establish that the proposed position is a qualifying religious occupation.

Further, 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 within 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.