PUBLIC COPY

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

C1

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

[redacted]

File: WAC 01 219 50003 Office: CALIFORNIA SERVICE CENTER Date: JUL 16 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[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 employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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, 8 U.S.C. § 1153(b)(4), to perform services as a music missionary and choir director. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner argues that the beneficiary's duties are inherently religious rather than secular.

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 regulation at 8 C.F.R. § 204.5(m)(2) defines a "religious occupation" as:

> 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 these proceedings. 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 (cited above). 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 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 Service 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 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 a letter accompanying the initial filing, counsel claims that the beneficiary's position qualifies as professional because "the minimum of a baccalaureate degree is required . . . in the Occupational Outlook Handbook." Counsel cites no specific passage in the *Handbook* to support this claim. The *Handbook* contains no specific listing for "choir director" or "music missionary." The listing for "musicians, singers, and related workers" (on page 131 of the 2002-2003 edition) includes a paragraph about "music directors," including "choral directors." The *Handbook* states that "[m]usic directors . . . need considerable related work experience or advanced training," but it does not define "advanced training" or otherwise specify that a bachelor's degree is the minimum requirement for entry into the occupation.

Reverend [redacted] senior pastor of the petitioning church, describes the beneficiary's work:

> [The beneficiary] became our Choir Director in October of 1997, and has been serving as Music Missionary/Choir Director since October 1998, which continues to date.
>
> As a Music Missionary/Choir Director, [the beneficiary] will continue to be responsible for overseeing, planning, implementing and executing Church music ministry and through music the missionary programs for students, adults, and our Church leaders. He will confer with Church leadership to plan, develop and budget programs for our congregation, its Choir and for outreach programs. He

> will direct and train Choir members, music ministry volunteers and our congregation in general, as well as interested members of our community, in the music of our Church and its traditions. He will assist in the musical aspects of regular services, special events, programs and missions.

The petitioner submits documentation showing that the beneficiary studied at Westminster School of Theology, Seoul, Korea, from March 1991 to February 1995, and graduated with an unnamed degree in "CHURCH MUSIC (Vocal music)." In 1997 and 1998, the beneficiary took additional courses at Bethesda Christian University and Theological Seminary, Anaheim, California.

The director issued a request for evidence on December 4, 2001. The only evidence that the director requested concerned "evidence of the beneficiary's work history" during the relevant two-year period. The petitioner responded to this request by submitting payroll documentation and other materials. The director's decision does not allege any deficiencies in this documentation.

The director denied the petition, stating "[t]he beneficiary's duties do not relate to a traditional religious function" and therefore "the petitioner has failed to establish that the position of Choir Conductor constitutes a qualifying religious occupation."

On appeal, counsel protests that the director's request for evidence did not indicate that there was any question about the qualifying nature of the occupation, and thus the denial rests on a deficiency that the petitioner has never had an opportunity to address. While this omission does not mandate the approval of the petition, it certainly constitutes error on the director's part. Counsel also notes that the petitioner's response to the request for evidence included a listing of the beneficiary's duties, many of which are plainly religious and outside the usual scope of duties of a musician or secular musical director.

In a letter submitted on appeal, Rev. [redacted] cites several dictionary definitions indicating that a "cantor" is "a church choir leader," "[t]he person who leads a church choir," and "the leader of a church choir." As counsel has observed, 8 C.F.R. § 204.5(m)(2) lists "cantor" as an example of a qualifying religious occupation. This argument, by itself, is not compelling, because, as Rev. Na admits, the term "cantor" in reference to a choir director "is outdated and not currently used any longer in most churches." The term "cantor" is, however, still in current use in Jewish synagogues, where the cantor performs a distinctly different, and more central, function than that of a choir director. The regulatory reference to "cantors" appears, therefore, to apply more readily to Jewish cantors than to choir leaders who, as the petitioner admits, are rarely called "cantors" today.

Rev [redacted] also states:

> It is . . . absolutely necessary that the person who is leading our time of worship as a congregation does adhere to not only the beliefs and forms of the denomination, but also to the exact form of worship particular to our church. This means that the

> position of Cantor/Choir Director could not possibly be considered a secular function that could be filled by anyone outside our denomination or specific church creed. . . .
>
> [The beneficiary] received his degree in Church Music and Liturgy at Westminster Seminary School in Seoul, South Korea, which specifically qualifies him for the religious occupation that he currently fills in our church.

The petitioner submits the beneficiary's weekly work schedule reflecting 42 hours per week. The majority of this schedule consists of worship services, practice, and preparation for services. The petitioner has shown that the beneficiary has several years of specialized training from religious schools, and that the beneficiary's duties involve substantially more than simply providing musical accompaniment during church services. The evidence has overcome the director's finding that the beneficiary's occupation is a secular one that does not involve a traditional religious function.

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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

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