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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: [redacted] (EAC-01-232-57235)

Office: Vermont Service Center

Date: JUN 05 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]

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.

Myna L. Rosenberg
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 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), to perform services as a choir director at a monthly salary of $1,500.

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

On appeal, counsel for the petitioner submits a written brief and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in § 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).

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part:

> Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue Code of 1986 at the request of the organization.

The issue to be addressed 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.

The petitioner in this matter is a church affiliated with the Presbyterian Church (U.S.A.). It has demonstrated the appropriate tax exempt status under section 501(c)(3) of the Internal Revenue Code. The petition was filed on May 2, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a choir director from May 2, 1999 until May 2, 2001. The record indicates that the beneficiary last entered the United States on October 28, 1998 in an undisclosed manner. The beneficiary has resided in the United States since such time in an unlawful status. The petition, Form I-360, indicates that the beneficiary has not worked in the United States without permission.

Regulations at 8 C.F.R. 204.5(m)(2) state, 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.

In response to the Bureau's request for additional evidence, the petitioner stated that the beneficiary arrived at its church in October 1998, and the church members "immediately recognized his outstanding singing tenor voice on the first day. The members invited him to our choir, which Mr [redacted] accepted." The petitioner

claimed that the beneficiary has been singing as a tenor soloist, leading the tenor section in the choir, conducting the choir and devoting his time to the music mission. The petitioner described the duties of the proposed position of choir director as follows:

> to conduct choir performance during the weekly services, to select weekly repertoire for the worship service, to practice the selections with choir members, to recruit new members to join the choir, to train the members to perform satisfactorily, to classify members by their voice pitch, to evaluate the quality of voice to assign appropriate parts in the performance, to coordinate voice and instruments to achieve optimal harmony, to give private singing lessons on one to one basis, and supervise special programs for the religious holidays and summer camp activities.

The petitioner asserted that the beneficiary has been working in the proposed position since October 2001; however, "we do not have the recollection nor record of the exact date of his involvement in the above duties, as he worked without pay." The petitioner further asserted that the beneficiary will receive remuneration once he receives employment authorization.

The petitioner provided a letter from the foreign church, Kumsung Church, Presbyterian Church of Korea which indicated that the beneficiary has been a member of its church since 1995. The letter listed the beneficiary duties as:

> January 1996 to December 31, 1997
> Conductor at Hansori Missionary choir and director of Siloahm choir.
>
> January 1, 1998 to August 30, 1998
> Leader [sic] singer in tenor part at Zion choir and director at Siloahm choir.

The petitioner provided a certificate from the Korea Mission Theological Seminary in Seoul, Korea where the beneficiary majored in "missionalogy" and graduated on February 22, 1994.

On appeal, counsel argues that music plays not only a part of worship between ceremonial acts, but also serves as soft background music throughout the process. The music is very much a part of religion. Counsel asserts that the church holds weekly ceremonies with praise of God in hymns, and attempts to improve its services with the best musical performances it can provide. Counsel contends that the proffered position is a traditional religious function.

The petitioner provided a letter reiterating its job-offer and the beneficiary's duties since his arriving at its church in October 1998.

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. 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 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 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.

The petitioner failed to state the size of its choir. Absent such information, the Bureau is unable to conclude that the position of choir director at its church could reasonably be a full-time permanent position. There is no indication that the position was advertised or that other candidates were considered. Furthermore, there is no indication that the beneficiary has any training in music. The petitioner stated that the position would become permanent, once the petition has been approved. This set of facts is insufficient to establish that the proposed position is, or will be, a traditional religious occupation with the petitioning church. A petitioner must credibly establish its intent to employ the alien beneficiary in the capacity specified in the petition. *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966).

The duties of a choir director do not appear to constitute the duties of a religious occupation as contemplated by the regulations. Music is a component of the worship services of many religious denominations. However, the performance of music for a religious organization is not considered a qualifying religious occupation for the purpose of special immigrant classification. A musical background, rather than a theological one, is the only prerequisite for the position. There is no inherent requirement that a person employed as a choir director be a member of the employer's denomination or that he or she participate in the worship services, beyond providing the musical direction. The

duties of the position are not necessarily depended on any religious background or prescribed theological education. Nor is the performance of the duty directly related to the creed and practice of the denomination. Accordingly, it is concluded that the petitioner has failed to establish that the position of choir director constitutes a qualifying religious occupation within the meaning of section 101(a)(27)(C) of the Act.

It is noted that the petitioner has provided contradictory statements regarding the position of choir director. The petitioner, in its letter dated April 30, 2001, stated that "we presently have a choir director who works part time, spending about two (2) full days a week. He is being paid $6,000 a year, and we can afford to keep him in addition to a full time director." In a separate document, however, the petitioner claimed that the church has a choir director, but he or she is a part-time "volunteer." Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Beyond the decision of the director, the petitioner has failed to demonstrate eligibility on other grounds.

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In this case, during the two-year requisite period, the beneficiary was never an employee of the petitioning church, but rather a volunteer member of its choir. As mentioned by the petitioner, the beneficiary's uncompensated services as choir director commenced October 2001. Further, the beneficiary's actual occupation or means of financial support in the United States has not been disclosed.

Finally, counsel's claim that "the beneficiary came to this country solely to carry on his religious singing occupation in the church" is not persuasive. If the beneficiary's purpose in coming to the United States was to work for the petitioner, it would have been a simple matter to file the petition form prior to his departure from Korea. Counsel further claims that as proof of his continued residence in the United States, the beneficiary's August and November 2000 bank statements are being provided. Because the record contains no proof of the beneficiairy's entry into the United States, there is no means by which the Bureau can confirm

his claimed period of residence in the United States. As the appeal will be dismissed on the grounds discussed, these issues will not be examined further.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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.