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Bureau of Citizenship and Immigration Services

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

[REDACTED]

**JUL 16 2003**

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn, and the petition will be remanded for further action and consideration.

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 choir conductor. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

On appeal, counsel argues that the petitioner has established that the position requires specific religious training and that the beneficiary has received such training.

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).

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 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 denying the petition, the director stated that the beneficiary's job requires musical training, but not "special religious training." The director stated "[t]here are members of any church with musical ability who could perform the job of choir director." The director determined, therefore, that the petitioner has not established that the beneficiary's position constitutes a religious occupation.

Father [REDACTED] pastor of the petitioning church, states "[t]his is not the type of job that can be performed by a caring member of the religious organization and is [sic] a position that is routinely performed by a congregant." Fr [REDACTED] adds "[t]here is specific training for this position. . . . This training includes instruction in religious Ukrainian language (that is the language of the liturgy as well as how it must be sung) as well as in specific religious music." The petitioner has submitted documentation to show that the beneficiary has in fact received such training.

Reverend [REDACTED] pastor of the Paraskevia Piatnytsia Parish, states that the beneficiary's position "requires special talents, educational and religious training, especially in religious music and choir conducting. . . . Our holy church traditions require that the liturgy and other celebrations be sung. . . . [W]ithout the singing a Holy Mass cannot be conducted."

The petitioner's submissions appear to be sufficient to establish that the beneficiary's duties as choir director represent traditional religious functions, rather than wholly secular musical duties. The petitioner has thus overcome the only stated ground for denial.

Review of the record, however, reveals another issue of concern which must be addressed before the petition can be approved. The petitioner submits a weekly schedule bearing the beneficiary's name. Because the beneficiary is still in Ukraine, and has not worked for the petitioner, this document appears to represent a proposed schedule. The schedule shows 37 hours of work per week, broken down into the following duties:

Sing divine liturgy	9 hours per week
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Music/piano instruction	3 hours
Library oversight	20 hours
Children's choir	3 hours
Adult choir practice	2 hours

According to the above schedule, more than half of the beneficiary's hours are to be devoted to "library oversight." The record contains no information about this duty. Because "library oversight" occupies 20 of the beneficiary's 37 scheduled hours, it seems to constitute the beneficiary's primary duty. At most, only 17 hours per week directly relate to musical services.

We note that the petitioner has submitted letters from two different churches in Ukraine, both of which indicate that the beneficiary continues to work there. If the beneficiary indeed works at two different churches in Ukraine, then this reinforces the concerns raised by the beneficiary's proposed work schedule. Nothing in the record shows that the single, petitioning church would be able to provide full-time employment in the traditional religious occupation of choir director. The above letters and proposed schedule are all consistent with part-time choir duties, with the remaining time occupied either by duties at a second church (as with the beneficiary's two employers in Ukraine), or by what appear to be secular "library oversight" duties (at the petitioning church). Part-time work in a religious occupation, rounded out to full-time through the addition of secular duties, cannot qualify the beneficiary for the classification sought.

The director must ascertain further information about the "library oversight" duties that would occupy the majority of the beneficiary's working hours. If it is the petitioner's contention that "library oversight" is a traditional religious occupation, then the petitioner must establish what kind of training is needed for the job; that the beneficiary has in fact received such training; and that the beneficiary has been engaged in such work continuously for at least the two years immediately prior to the filing of the petition.

The above issues require serious attention and a credible, well-documented response from the petitioner.<sup>1</sup> Nevertheless, the director's decision and prior correspondence did not address this issue and therefore the petitioner has not had an opportunity to address it.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

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<sup>1</sup> We note that a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998).