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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

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]

PUBLIC COPY

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 appeal will be dismissed.

The petitioner is a religious organization. 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 evangelist/missionary. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

On appeal, counsel states that a brief is forthcoming within 30 days. To date, nearly a year after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands.

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) contains the following definition:

> *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 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. Persons in qualifying religious occupations 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. Religious knowledge gained as a matter of course as a result of membership in the religious denomination does not constitute training for a religious occupation.

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.

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 petitioner, in an unsigned statement, describes the beneficiary's work and background:

> [The beneficiary's] duties include singing with the Liberian A-Cappella Choir as a bass, speaking to various groups in the United States on behalf of the [petitioner] (which includes sharing information on the various ministries [the petitioner] does in Liberia), and sharing historical and cultural information on Liberia [with] those groups. In churches and other allowable places, [the beneficiary] shares his testimony, which may include the presentation of the gospel message. He is responsible for the sale of choir products, which include photos, tapes and CDs. He is also responsible for aiding in maintaining good morale and harmony within the group. . . .
>
> [I]n 1995, [the beneficiary] began singing with the church choir. In [the petitioning organization's Liberian counterpart], his duties included assistant to the Director of Missions, teaching Bible

> Study, and giving guitar lessons to younger members of the congregation. . . . [The beneficiary] was required to complete [musical] training before participating in this tour.

The petitioner adds that the U.S.-based petitioner "serves as an agency to raise funds for and channel funds to" the entity in Liberia.

The director requested various documentation, including a copy of the beneficiary's passport and "a listing of the educational and experience requirements to perform the job duties." The petitioner's response to this request consists of brochures and a letter from Bishop Alfred Jackson, executive vice president/treasurer of the petitioning entity. The response includes neither a copy of the passport nor any explanation for its absence. Bishop Jackson states:

> The Liberian A-Cappella Choir's mission is to raise awareness of the situation of the Liberian people and to raise funds to support the various ministries of the [petitioning organization]. . . . They will accomplish this through performing, upon invitation, and raising free will offerings at churches, schools, organizations and events. They will also solicit sponsors for the orphan children that are cared for by the [petitioner].

Bishop Jackson asserts that the beneficiary's duties include setting up and breaking down sound equipment for concerts, and assisting blind members of the group. Bishop Jackson provides a sample schedule for a 37-hour work week, consisting of five hours of rehearsal, five hours of equipment setup and breakdown, eleven hours of performance, and sixteen hours of traveling between performance venues. Bishop Jackson then addresses the requirements for the position:

> There are no academic requirements for this vocation since musical ability is innate to most Africans. However, because this is an a-cappella group, the individual must have vocal ability. . . . He must be able to work well with others and contribute to the spiritual well being of the entire group. The individual must be a Christian [who] has been a member of and has served in the local church in Liberia . . . for five years while participating in the music ministry for three of those years. [The beneficiary] fulfills those requirements.

The director denied the petition, stating that the position does not require specialized religious training, but "only . . . the ability to sing." The director concluded therefore that "[t]he record does not establish that the beneficiary will be employed in a religious occupation."

On appeal, counsel states:

> You err and discriminate by saying that a Christian Choir Singer is not a religious profession but a Jewish cantor is. Furthermore, you err by claiming that a religious singer only requires the ability to sing. They must have knowledge about religion and religious songs and have a conviction in Christ. Moreover, they sing praises to Christ and perform missionary work in their singing of praises to the King – surely this is

> more than your understanding. Finally, throughout Christian history, music and singing have played a vital role in the religion.

Counsel does not establish that the beneficiary's duties (including significant amounts of travel, fund raising, and multiple performances outside of houses of worship) closely parallel those of a Jewish cantor. Without evidence, the claim of arbitrary discrimination is unfounded.

A top official of the petitioning entity has stated that the principal job requirements are "vocal ability" and membership in the church (and thus the familiarity with church doctrine that such membership normally conveys). Counsel's statement on appeal amounts, in essence, to an unsubstantiated contradiction of the petitioner's own description of the job requirements.

Counsel is correct that music has long been a part of Christian tradition, but the same can be said of many other faiths, some of them centuries older than Christianity. The petitioner has not shown that the beneficiary's overall duties amount to traditional religious functions. The beneficiary's occupation, as the petitioner describes it, is essentially membership in a touring vocal group. The petitioner has not shown that the petitioner's denomination has traditionally employed full-time salaried touring vocal groups. Furthermore, a considerable percentage of the beneficiary's performances take place at schools. If these are public schools, then the group is prohibited from engaging in proselytizing or other pervasively religious functions. The petitioner appears to have acknowledged this limitation, stating that the beneficiary "shares his testimony" but only in "allowable places." Performances at public schools would raise troubling constitutional questions if their focus was on religion rather than entertainment and cultural education.

Counsel contends that the very act of "sing[ing] praises to Christ" constitutes "missionary work." It is common, however, for entire Christian congregations to join in the singing of hymns during Sunday services. Therefore, we cannot find that the act of singing hymns, spirituals, gospel songs, and other songs with religious lyrical content automatically constitutes a qualifying religious occupation.

Furthermore, 8 C.F.R. § 204.5(m)(2) specifically excludes fund raising from qualifying religious occupations. The petitioner has indicated that a primary purpose of the U.S. organization is "to raise funds for and channel funds to" the associated organization in Liberia. The petitioner has also highlighted the beneficiary's own fund raising role.

Review of the record reveals another issue. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains

> lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. Bishop Jackson states that the beneficiary will receive $9,500 per year plus room, board, travel and medical expenses. Neither the initial submission nor a later supplement contains evidence of this ability. Indeed, the record contains little evidence of any kind, consisting primarily of letters and promotional materials.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.