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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

File: [redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

SEP 30 2003

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: SELF-REPRESENTED

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 Citizenship and Immigration Services (CIS) 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 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 youth leader and worship leader. The director determined that the petitioner had not established its status as a qualifying tax-exempt religious organization, or that the position qualifies as a religious occupation.

On appeal, the petitioner submits additional documentation and copies of previously submitted materials. The petitioner argues that this evidence overcomes the grounds for denial.

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 first cited ground for denial concerns the petitioner's tax exemption. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
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> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner must either provide verification of the church's individual exemption from the Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS. Such documentation to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 includes a completed Form 1023, a completed Schedule A attachment, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The petitioner's initial submission includes a copy of the petitioner's articles of incorporation (containing a qualifying disposition clause) and a certificate showing that the petitioner is exempt from the New Jersey state sales and use tax. The director subsequently instructed the petitioner to establish its exemption from federal taxation, as the above regulations require. In response, the petitioner has submitted another copy of the New Jersey certificate.

On appeal, the petitioner submits a partial copy of the instructions to IRS Form 1023, indicating that churches "may be considered tax-exempt under section 501(c)(3) even if they do not file Form 1023." This instruction does not settle the issue; otherwise, the above-cited regulations would be meaningless and redundant because a petitioning entity would need only to declare itself to be a church and therefore exempt. The regulations require the petitioner to establish, rather than merely claim, this exemption. The petitioner must still comply with the documentary requirements in those regulations. In this instance, the petitioner has submitted excerpts from Form 1023, but not the actual completed form itself or a completed Schedule A attachment. Thus, the petitioner has not complied with 8 C.F.R. § 204.5(m)(3)(i)(A) or (B).

The other issue in this proceeding is whether the petitioner has made a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States.

The regulations at 8 C.F.R. § 204.5(m)(2) contain the following pertinent definitions:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious

calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

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. 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.

CIS 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 CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. 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).

Rev. Gustavo Adiers, senior pastor of the petitioning church, states that the beneficiary "has been the Youth Leader and the worship leader of the church since March 1999 earning $400.00 for 36 hours per week," and that the petitioner desires the beneficiary to continue working in that capacity.

We note that the petitioner's Form 990 Return of Organization Exempt from Income Tax for 2000 indicates $50,216 in "compensation of officers, directors, etc." and $4,261 in "other salaries and wages." $4,216 is not sufficient to account for $400 per week over the course of a year. Part V of the form, "List of Officers, Directors, Trustees, and Key Employees," has been left blank and therefore the petitioner has not disclosed whether it considers the beneficiary to be in that group. On the Form 990 from 2001, the petitioner has identified the beneficiary as a "deacon" who earned $19,200 and worked 35 hours per week.

A weekly schedule indicates that the beneficiary's tasks are to lead worship rehearsals, worship, and youth prayer services; teach Bible Seminar and Sunday School to youth group; and youth counseling.

Regarding the beneficiary's training, the petitioner submits documentation showing that the beneficiary, already in the United States, completed five semesters of correspondence courses with a theological school in Brazil between 1993 and 1996 (the year the beneficiary reached the age of 19). In March 2001, the beneficiary completed "the First Year Part-Time Program of Extensive Christian Training" at the Advanced Christian Training School in Edison, New Jersey.

The director requested further information about the beneficiary's training and duties. In response, Rev[redacted] states that the beneficiary "became the Worship Leader of the Church and Youth Leader on March 1999 and a Chaplain on June 2001. These functions are traditional religious functions in our church and require special religious training." Beyond the courses described above, Rev.[redacted] states "[f]rom September 1997 through September 1998, [the beneficiary] was enrolled with the International Christian School of Music located in Garfield, New Jersey, receiving a certificate of accomplishment for the Intensive Course of Vocal and Piano Level I and Level II." The petitioner submits a certificate from that school, and one from the United Chaplains State of New York Inc. affirming the beneficiary's membership in that organization as of June 30, 2001.

The petitioner submits copies of church programs, including schedules of the week's events. The schedules include several names, but the beneficiary's name is not among them except for what appears to be a reference to English classes. Because the documents are in Portuguese, with no translations submitted, we cannot determine the full meaning of the reference. The event involving the beneficiary took place at 5:00 p.m. A schedule of events in the same program lists nothing beginning at 5:00 p.m., and therefore it is far from clear that the beneficiary's 5:00 p.m. event was an official or integral church activity.

The petitioner also submits a copy of the *Bylaws of the General Council of the Assemblies of God*. Article XV, Section 4, deals with the "Youth Department," describing its responsibilities and functions. Section 4c(1) recommends that "provision be made for a district youth department in each district of the Assemblies of God," and section 4d(1) recommends "that provision be made for a sectional youth ministry in each section of the Assemblies of God." At the local level, there is no suggestion that "provision be made"; rather, section 4e(1) states "[a]ll churches are urged to

develop a vigorous youth ministry" which, pursuant to section 4e(2), "will come under the general supervision of the pastor."

Article XV also establishes a Men's Ministry and Women's Ministry. The provisions of Article XV do not state that the Youth Ministry involves a full-time, paid youth leader at the local level.

Article VII of the bylaws, entitled "Ministry," lists various "qualifications . . . for ministerial recognition." There is no comparable provision in Article XV to list the qualifications of a youth leader, nor do the bylaws appear to mention the title of youth leader at all.

In denying the petition, the director stated "the petitioner has not explained the standards required to be recognized as a youth leader in its denomination or shown that the beneficiary has satisfied such standard." The director further stated that the petitioner "did not submit a letter from an authorized official of its denomination verifying the denomination['s] recognition of [the beneficiary's] credentials as a youth leader." The director noted that the "copy of the by-laws does not list the requirements and training to be a youth leader."

On appeal, Rev. [redacted] states:

> The beneficiary has been working for [the petitioner] from March 1999 as a Worship leader and Youth Leader. . . . A Worship Leader, which is the real title for the position he has and will continue to have with our church. Another name for the same position which he holds is a Cantor. [The beneficiary] is a talented cantor and musician. He plays the piano, guitar and the drums. He is part of every service of the church, including special ceremonies like weddings, baptisms, funerals, important celebrations of the church, etc. He has become important among our congregation and he has gained the youth membership of our church. . . . During worship rehearsals, he chooses the singers for the chorus, rehearse[s] the songs they will be singing and he works with them until he gets the results he wants. A Worship Leader or Cantor is a traditional religious function and he certainly has a religious vocation. He has taken theology courses . . . and previous to that, he took Correspondence Courses in Theology . . . supervised by me. All the above has been duly documented.

The petitioner submits photographs of the beneficiary rehearsing with other musicians, and documentation of the beneficiary's course work between 1997 and 2001. If the beneficiary assumed his current position in March 1999, any training after that date was clearly not required for the job. Similarly, the beneficiary's membership in the United Chaplains State of New York is without consequence here because the beneficiary joined that organization on June 30, 2001, two months after the filing of the petition. Aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

The petitioner submits copies of the beneficiary's tax returns from 2000 and 2001. These tax documents indicate that most of the beneficiary's gross income derived from his operation of a freight company, although most of the beneficiary's net income (i.e. after expenses) derived from work as a "pastor" (the term the beneficiary used on his tax returns). The 2001 tax return indicates that the beneficiary earned $20,800 as a pastor, whereas the petitioner's Form 990 for 2001 states that the beneficiary was paid $19,200. This discrepancy is unexplained. The record contains no Form W-2 or 1099 or other contemporaneous record that would indicate which amount is more accurate. Also, as noted above, the petitioner's 2000 Form 990 does not report any payments to the beneficiary at all. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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).

Rev. [redacted] states that the beneficiary is not ordained, but would be eligible for ordination if he chose to pursue it. We cannot find that the beneficiary qualifies for classification as a minister as the regulations define that term. All other issues aside, the beneficiary's documented secular work with a freight company in 2000 and 2001 shows that the beneficiary was not continuously engaged in the vocation of a minister throughout the two-year period immediately prior to the petition's April 30, 2001 filing date, as required by 8 C.F.R. § 204.5(m)(1).

Rev [redacted] assertion that the denomination traditionally and routinely employs full-time paid cantors is not supported by any evidence from higher levels of the denomination's hierarchy. The bylaws submitted previously do not appear to mention music at all. Documents in the record ascribe at least five different job titles to the beneficiary: "youth leader," "worship leader," "deacon," "pastor" and "cantor." The beneficiary has clearly undertaken musical and theological training, but the petitioner has produced no contemporaneous documentation showing that the beneficiary's work is as integral to the petitioner's worship services as the petitioner now claims.

The petitioner has submitted two very different weekly schedules purporting to describe the beneficiary's regular duties. In general, the record has not been wholly consistent as to the beneficiary's job title, duties, or compensation. The petitioner has not submitted persuasive evidence to overcome the director's findings regarding the beneficiary's occupation.

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.