

CL

U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy



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

File: [Redacted]

Office: VERMONT SERVICE CENTER

Date: SEP 30 2003

IN RE: Petitioner:
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:



PUBLIC COPY

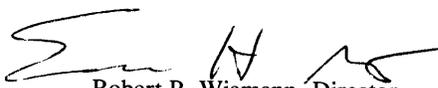
INSTRUCTIONS:

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 immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church, seeking classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), in order to employ him as a director of music ministries at an annual salary of \$21,840.

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 and that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

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

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 petitioner, [REDACTED] is affiliated with the Roman Catholic denomination. The petitioner established that it is a qualifying organization. The beneficiary is a 32-year old native and citizen of Korea who last entered the United States on June 24, 1999 as a B-2 nonimmigrant visitor for pleasure. The petition states that the beneficiary has an application for an F-1 nonimmigrant student visa pending.

The first issue to addressed in this proceeding is whether the petitioner established that the proffered position is a qualifying occupation.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

*

*

*

(C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted.

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or

occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

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.

The petitioner describes the beneficiary's job duties as follows:

As a full-time music director in permanent capacity, [the beneficiary] will be required to do the job as follows:

1. To select choir music.
2. To direct choir, pianist for most church services and rehearsals.
3. To prepare special choir performances for Christmas, Easter, Bible Rally, etc.
4. To organize Sunday School Music Programs.
5. To consult the Priest for each worship.

The petitioner's Pastor wrote CIS stating that:

In order to perform the duties of a professional religious worker, the incumbent must have a B.A. degree in music study as well as at least two years experience in performing the music director job, and the job duties are to be traditional religious function performed routinely by other members.

[The beneficiary] obtained his B.A. degree in Music at Dankuk University, Seoul, Korea, on February 18, 1994. He also completed nine credits of graduate courses in Music during 1994-1997 at Dankuk University, Seoul, Korea.

The director determined that the beneficiary's religious duties do not appear to require specific religious training or that the position's duties are traditional religious functions above those performed routinely by other members. The director further found that the petitioner failed to provide published material about its organization that shows which occupations are considered religious occupations.

On appeal, the petitioner asserts that the music director must have special knowledge about church music to spiritually lead the congregation and that the job is complex and difficult. The petitioner states:

Through his spiritual music selection, the music director helps the congregation open their hearts to God, so that they are ready to take in the word of God and open their heart to pray to God. It is very important that the music director select appropriate music for the appropriate occasion. The music director must possess a special knowledge about church music for any occasion. This knowledge can be attained through college education in music and vast amount of experience. However, mere knowledge in church music does not qualify for this job. Our church needs a person who is a man of God. He must have deep-rooted faith in God and must be filled with Holy Spirit.

Also, the music director must be able to communicate and relate personally to our 450 Korean congregations.

[Sic.]

As evidence that the proffered position has traditionally been a full-time salaried position at the petitioner's church, the petitioner submitted copies of W-2's for another individual who purportedly held the position of music director. This evidence is not persuasive evidence that the proffered position has traditionally been a full-time salaried position within the petitioner's church or denomination. There is no indication on the Form W-2 of the individual's job title, only that he had been in the petitioner's employ.

In review, the petitioner has failed to establish that the proffered position has been traditionally a full-time salaried position within the petitioner's church or denomination; thus, that the position is a qualifying religious occupation.

The next issue raised by the director is whether the petitioner established that the beneficiary had had the requisite two-years of continuous experience in the proffered position.

8 C.F.R. § 204.5(m)(1) states, 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.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing in the capacity of a director of music ministries since at least April 30, 1999.

In a letter dated April 25, 2001, the pastor of the petitioning church wrote CIS that the beneficiary commenced employment with the petitioner in September 1999 on a full-time basis and that the beneficiary had been employed for two years from January 1996 to December 1999, as a full-time music director at Inchun Dong Mak in Inchunci, Korea.

In response to a request for additional evidence, counsel

for the petitioner said that the beneficiary could not file individual tax returns because he lacked a social security number. On appeal, the petitioner submits copies of tax returns filed by the beneficiary for the years 1999, 2000 and 2001. The tax returns were filed prior to the petitioner's response to the request for additional evidence and each return lists the beneficiary's social security number. In the absence of W-2's, AAO is unable to determine the source of the beneficiary's income.

Further, the documentation provided was inconsistent as to when the beneficiary worked at a Korean church. The pastor of the petitioner church wrote CIS that the beneficiary had been employed at the Inchun Dong Mak church in Korea from January 1996 to December 1999 for two years as a full-time music director. The petitioner also submitted a certificate of employment from the Kong Mak Methodist Church stating that the beneficiary had been employed there from January 1996 to December 1997. 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, 591-92 (BIA 1988).

In review, the petitioner has failed to establish that the beneficiary had been continuously employed in a qualifying religious occupation for the two-year period immediately preceding the filing of the petition.

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.