C1

U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

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

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 30 2003

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: SELF-REPRESENTED

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 minister of music. The director determined that the petitioner had failed to establish that the beneficiary qualifies for classification either as a minister or as a worker in a religious occupation. The director also found that the petitioner has not established that the beneficiary has the required two years of continuous employment experience immediately preceding the filing of the petition, or that the petitioner is able to pay the beneficiary's proffered wage.

On appeal, the pastor of the petitioning church asserts "we are a real church" and contends that previously-submitted documents should suffice to address the director's concerns.

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 issue under consideration is whether the beneficiary's occupation qualifies as a religious vocation or occupation. 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 regulation at 8 C.F.R. § 204.5(m)(2) contains the following relevant 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. [redacted] pastor of the petitioning church, states that the beneficiary "has worked untiringly with the choir, molding singers out of those who thought they could not sing. He is a duly ordained minister and uses his ecclesiastical title Elder." In a separate letter, Rev [redacted] states that the beneficiary "will conduct our choirs, train our Musicians, select and direct the music during Sunday and special worship services. Further he will assist the Pastor with Hymnology notes to further help in the selection and performance of Hymns." The petitioner does not specify whether it considers the beneficiary's position to be ministerial or a religious occupation. Rev. [redacted] provides the following weekly breakdown of the beneficiary's hours worked:

Vocal coaching (necessary for those with solo parts)	20 hours per week
Part rehearsal (each part rehearsed individually)	6 hours per week
Whole Choir rehearsal	2.5 hours per week
Performance and worship	8 hours per week
Preparation	4 hours per week

A booklet, entitled *Pattern of Church Work* and written by Rev [redacted] states that the principal function of the minister of music is "assisting the church in planning. Conducting, and evaluating as comprehensive music ministry" [sic]. The various specific responsibilities include "[c]oordinate the Church Music Ministry with the calendar and emphases of the church" and "be available for counsel, arrange, and provide music for special projects, ministries, and other church-related activities."

The petitioner submits a copy of a "Certificate of Ordination," dated June 16, 1987, indicating that the beneficiary was ordained as "a Minister of the Gospel" by Vision Pentecostal Church of God, Brooklyn, New York. We note that the certificate bears the signatures of Rev [redacted], evangelist [redacted] and [redacted] (full name not provided). It is not clear whether these individuals are related to Rev [redacted] of the petitioning church. Another signature on the certificate of ordination reads [redacted] Materials from the petitioning church refer to evangelist [redacted]

The director instructed the petitioner to submit evidence to show that the beneficiary's duties "require specific religious training beyond that of a dedicated and caring member of the congregation or body. The evidence must establish that the job duties are traditional religious functions above those performed routinely by other members." The petitioner has responded by submitting copies of church programs, some of which do not mention the beneficiary at all, from 2001. The petitioner did not address the director's questions regarding the nature of the beneficiary's occupation.

The director concluded that the petitioner has not established that the beneficiary qualifies as a minister. The director noted that the petitioner had not submitted a letter from "an authorized

official of the denomination" attesting to the beneficiary's authority as a minister. The director also cited *Matter of Rhee*, *supra*, in which the Board of Immigration Appeals found that an alien minister of music, claiming to be an ordained minister, did not qualify for the classification because the "ordination was based on her music training and not on any theological training or education" and because there was no evidence that the alien had actually participated in the performance of sacraments or other functions consistent with the generally understood definition of "minister." The Board stated "[w]e do not agree that the issuance of a piece of paper entitled 'certification of ordination' by a religious organization should be conclusive as to who qualifies as a minister for immigration purposes." *Id.* at 610.

The director further concluded that the record contains no evidence that the beneficiary's position qualifies as "a traditional religious occupation, requiring special training." On appeal, Rev. argues that "[n]o regular devoted member can fulfill the position of a trained worker, [the beneficiary] is a trained Musician and a trained Minister biblically. . . . [E]very Officer of this church has to be qualified to perform their duties. [The beneficiary] not only needs to know [how] to read music, but also teach music and play music."

The petitioner's assertions on appeal do not establish what religious training, if any, is required for employment in the denomination as a minister of music. Musical skill is obviously necessary for a music-based occupation, but many people have wholly secular occupations in the field of music. The petitioner has not established that the denomination traditionally employs full-time, paid ministers of music, rather than simply utilizing the part-time services of dedicated members of the congregation who also have musical training and skill.

The next issue concerns the beneficiary's past experience in the occupation or vocation. The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "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." 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:

> (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on January 2, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a music minister throughout the two-year period immediately preceding that date.

The petitioner's initial submission did not indicate when the beneficiary began working as a music minister or otherwise establish the beneficiary's continuous employment from January 1999 through

the date of filing. The director requested evidence to establish the beneficiary's continuous employment during the two-year qualifying period.

In response, Rev. [redacted] asserts that employees receive Forms 1099 at the end of the year, unless they lack Social Security numbers in which case they receive "a statement of the Donation given." The record contains no such statements to reflect the beneficiary's salary during 1999 or 2000. The petitioner's response sheds no further light on the beneficiary's employment activity during the qualifying period.

The director, in denying the petition, noted that the record does not establish the beneficiary's continuous employment throughout the qualifying period. Furthermore, the director observed, the petitioner's 1999 Form 990 does not indicate that the petitioner had any full-time employees at all during that year. The director stated "the record contains no clear evidence to indicate that a position for a full-time religious worker exists in the petitioner's organization" or that the petitioner "has ever relied on salaried full-time employees rather than volunteers from among the members of the congregation."

On appeal, Rev [redacted] states "we [previously] submitted to you copies of the letter from Barbados" to establish the beneficiary's experience in that country. Review of the record reveals no letter from Barbados, but such a letter would not suffice in any case. The petitioner has indicated that the beneficiary has been in the United States since June 1996, and therefore he would not have been in Barbados during the 1999-2001 qualifying period. Prior employment in Barbados, even if meticulously documented, cannot serve in lieu of continuous employment during the two-year period immediately preceding the filing date; the parameters of the qualifying period are fixed in the statute and regulations.

The final issue raised by the director concerns the petitioner's ability to pay the beneficiary's proffered salary. The petitioner has indicated that the beneficiary's salary will be $18,200 per year. 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 initial filing includes a Form 990 Return of Organization Exempt from Income Tax for 1999, indicating that the petitioner's income exceeded its expenses by $14,934. The petitioner claimed no current assets except for $97 in cash. The petitioner reported $89,130 in "compensation of officers, directors, etc.," and did not claim to have paid "other salaries and wages." The return names the seven officers and directors; the beneficiary is not among them. The return describes the seven individuals as devoting between 12 and 30 hours a week to their respective positions.

The petitioner's 1998 Form 990 return reflects $93,662 in revenue above expenses, $113,646 in compensation of officers and directors, and $12,517.50 in other salaries and wages. During that same year, the petitioner's cash assets decreased from $5,384 to $600. The petitioner's revenues clearly decreased significantly from 1998 to 1999, and the salaries of Rev. [redacted] and other church officials reflect this decline.

The director requested additional evidence of the petitioner's ability to pay the proffered wage, but the petitioner's response to the request for evidence did not include any materials to address this request.

In denying the petition, the director stated that the petitioner has not shown that it has ever paid the beneficiary or any other employee for full-time employment. On appeal, Rev. [redacted] asserts "[w]e do rely on fulltime and parttime employees, we are a real church," but she does not explain why the 1999 Form 990 return does not reflect any salaries or wages except for compensation paid to seven part-time officers including herself. She states that "[w]e give everyone a 1099 at the end of the year, if you would like to see copies of the 1099's issued we would request [them] from our CPA." The director had already put the petitioner on notice to provide financial documentation of this kind; the assertion that the petitioner will endeavor to obtain it in the future cannot suffice at this late date. Rev [redacted] states "[w]e take care of our members [who lack employment authorization] by assisting them with financial help for food and rent donations," but the petitioner provides no evidence to support this claim.

The record contains no documentary evidence to establish that the beneficiary's position qualifies as ministerial or as a religious occupation (i.e. a traditional religious function); that the beneficiary was continuously employed in the occupation throughout the two years immediately prior to the filing of the petition; or that the petitioner has paid, or been able to pay, the beneficiary's proffered wage or that of any full-time salaried employee. The petitioner's statement on appeal only partially addresses these findings, and overcomes none of them.

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.