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U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
[redacted]

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

File: WAC-01-217-53087 Office: California Service Center Date: SEP 30 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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: 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 immigrant visa petition was denied by the Acting Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn, and the petition will be remanded to the director for further consideration.

The petitioner is a church. It seeks classification of the beneficiary as a 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). The position offered is that of Music Director. The director determined that the petitioner failed to establish that the position of Music Director ia a religious occupation.

On appeal, the petitioner states that the position is a religious occupation which does not involve any secular functions.

Section 203(b)(4) of the Act provides classification as a special immigrant religious worker to a qualified alien 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 has three congregations, of approximately 300 individuals, who are predominately Filipino. The beneficiary is a native and citizen of the Philippines who last entered the United States on April 28, 2000, as a B-2 visitor.

The petitioner has established that the position of music director constitutes a religious occupation for the purpose of special immigrant classification. However, there appears to be other reasons why this petition may not be approved.

The statute and the regulations require that for at least 2 years immediately preceding the time of application for admission, the beneficiary must have been continuously carrying on the religious occupation. The beneficiary does not appear to have the required two years.

The two year period in question dates from April 25, 1999 to April 25, 2001. The beneficiary arrived in the US as a visitor on April 28, 2000. Her resume shows that she worked as a part-time music director for the First Baptist Church of Dumaguete City, the Philippines from April 1999 until March 2000. During the same time period, she worked for Alpha Omega Academy in Dumaguete City as a part-time music teacher. The petitioner claims that the beneficiary began serving as their choir director immediately after entry in April 2000; however, evidence of payment dates only from August 18, 2000, with subsequent pay sporadic, but never amounting to more than $550 a month.

Additionally, the beneficiary is not working within the same religious denomination as required by the statute and regulations. In the Philippines the beneficiary was working for a Baptist church; in the US she is working for what is, or appears to be, a Wesleyan (Christian Fellowship) church. Saying that Protestantism is a religious denomination is too broad of a statement as there are numerous denominations within Protestantism.

The aforementioned issues need to be examined by the director. The director may request any additional evidence deemed necessary to assist him with his determination.

For this reason, the decision of the acting director will be withdrawn, and the petition will be remanded for further action and consideration.

ORDER: The decision dated April 24, 2001 is withdrawn; the record is remanded for the purpose of a new decision.