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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

JUL 01 2004

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

for

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner states that it 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) in order to employ him as a pastoral associate/musician.

The director determined that the petitioner has not established that the position qualifies as that of a religious vocation or occupation. The director further determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

On appeal, counsel submits a brief and additional evidence.

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 non-profit, 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, 2008, 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, 2008, 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 Revenue 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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

> Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide non-profit religious

> organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue Code of 1986 at the request of the organization. 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 first issue raised by the director is whether the petitioner has established that the position qualifies as that of a religious vocation or occupation. The director determined that the petitioner had not established that the proffered position is a traditional religious function within the denomination.

The term "religious occupation" is defined at 8 C.F.R. § 204.5(m)(2) as follows:

> 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 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," but instead provides a brief list of examples. A review of 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. The non-qualifying positions are those that are primarily administrative or secular in nature, such as janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The AAO interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, 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 and the petitioning religious organization.

The petitioner states that the duties of the position include organizing and directing a 15-person choir for the Spanish Mass, organizing and directing a 20-person bilingual choir, conducting rehearsals every Wednesday evening and Sunday morning, and coordinating music for the church's holy days of obligation and special events such as baptisms, weddings, funerals, and quinceaneras (fifteenth birthday celebrations). The petitioner states that the beneficiary will be compensated for 30 hours of work per work, including the church's Sunday celebrations.

On appea

> The position that I am offering is not only for directing a choir; it is for implementing liturgical norms, and reform, instruction on basic theology and liturgy.

The petitioner has not provided any explanation as to why these additional duties were not listed in the initial description of the position. Although the petitioner stated in the job description that the job entails 30 hours a week, the petitioner states on appeal that the position is actually a full-time position requiring 40 hours of work per week. The petitioner has not provided any explanation for this change in the stated number of hours the beneficiary will work each week. 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. Further, it is incumbent on 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 lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Although the petitioner states that the position is a traditional religious function, the record does not contain sufficient evidence to corroborate this statement. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has not established that the duties of the position are directly related to the creed or beliefs of the organization, that the position is defined and recognized by the governing body of the denomination, or that the position is traditionally a full-time, salaried position within the denomination and the petitioning church. Therefore, the petitioner has not established that the position is that of a religious vocation or occupation, and the petition must be denied for this reason.

The second issue raised by the director is whether the petitioner has established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition. The director determined that the petitioner had not established that the beneficiary was a full-time, salaried religious worker throughout the two-year qualifying period.

Pursuant to 8 C.F.R. § 204.5(m)(1):

> 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 March 27, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious vocation or occupation during the period from March 27, 1999 to March 27, 2001.

The petitioner states that the beneficiary entered the United States without inspection on or about April 15, 1998. He has remained in the United States in unlawful status since that date. Counsel stated in a letter dated September 14, 2002:

> Since entering the United States, [the beneficiary] has worked as a day laborer in yard work, construction and plumbing as well as working as a volunteer and as a paid worker at the church.

The petitioner has submitted the beneficiary's Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, for 1998 through 2001. According to these documents, the petitioner paid the beneficiary $2600.00 in 1998, $14,872.26 in 1999, $15,969.02 in 2000, and $16,759.00 in 2001.

The beneficiary's IRS Forms W-2 alone are not sufficient to establish that the beneficiary was a full-time, salaried religious worker throughout the two-year qualifying period. The petitioner also must submit evidence to demonstrate that the beneficiary was continuously performing the duties of a religious vocation or occupation on a full-time basis throughout the requisite period. As noted above, the petitioner did not account for the reported variation between 30 and 40 hours the beneficiary is said to have worked. In addition, counsel's letter of September 14, 2002, indicates that the beneficiary engaged in secular employment during an unspecified period. Furthermore, as noted above, because the petitioner has not established that the position is a qualifying religious occupation, it cannot be determined that the beneficiary has been continuously engaged in a qualifying religious occupation for the full two years immediately preceding the filing date of the petition. Therefore, the petition must also be denied for this reason.

Beyond the decision of the director, the petitioner has not established that it has had the ability to pay the beneficiary the proffered wage. The petitioner has not provided copies of its annual reports, federal income tax returns, or audited financial statements as required at 8 C.F.R. § 204.5(g)(2).

The petitioner also has not established that the beneficiary is qualified for a religious worker position within the religious organization as required at 8 C.F.R. § 204.5(m)(3)(ii)(D). The record contains a letter dated May 25, 2002, from Father [redacted] of the [redacted] in Mexico City, Mexico, stating that the beneficiary had completed various courses at the Instituto Sedes Sapientiae and th[redacted] under the auspices of the [redacted] The record contains a letter from an official of the Centro de Iniciacion Musical y Artistica in Mexico City, Mexico, stating that the beneficiary completed musical studies during the period from August 1995 to February of 1997, but the petitioner has not provided a description of the content of these courses or a copy of the beneficiary's transcript, nor has the petitioner provided any evidence to demonstrate that this training qualified the beneficiary as a religious worker within the denomination and the petitioning church. The record also contains documents showing that the beneficiary attended a three-day retreat entitled "Encuentros de Promocion Juvenil" that was offered by the [redacted] in April of 1999. This retreat enables a young person to become a member of the movement intended to train the youth of the Church to be leaders in their families and communities under the teachings of the Catholic Church. No evidence has been provided to demonstrate that participation in this retreat qualified the beneficiary as a religious worker within the religious organization. As the petition must be denied for the reasons above, these additional issues need not be further discussed.

In reviewing an immigrant visa petition, Citizenship and Immigration Services must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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.