

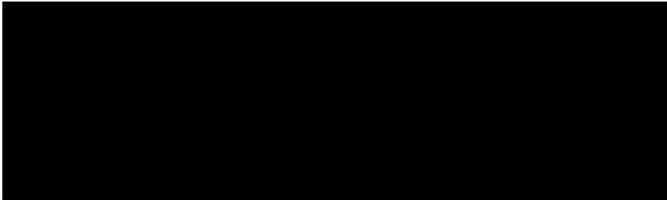
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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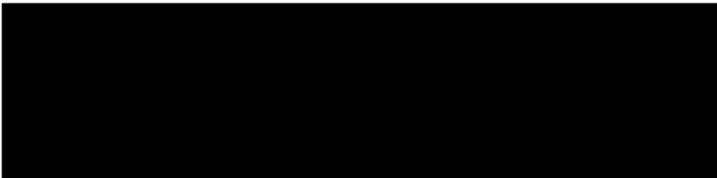
Petitioner:

Beneficiary:



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:



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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision. Because the petition cannot be approved without further evidence, the AAO will remand the petition for further action and consideration.

The petitioner is an archdiocese of the Roman Catholic 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as Director of Music Ministry at St. Bartholomew Catholic Parish. The director determined that the petitioner had failed to establish that the prospective employment relates to a traditional religious function.

On appeal, counsel submits a brief in which she asserts that the director "erred in concluding that the Beneficiary did not meet the criteria for classification as a Special Immigrant Religious Worker." The petitioner submits additional documentation in support of the appeal.

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 September 30, 2012, 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 September 30, 2012, 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).

The issue presented on appeal is whether the petitioner has established that the proffered position qualifies as that of a religious occupation.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must:

- (1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.
- (2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section.

Section 204.5(m)(5) provides, in pertinent part:

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

In its July 31, 2008 letter in support of the petition, the petitioner stated that the beneficiary had been serving as the Director of Music Ministry at St. Bartholomew Catholic Parish since June 2006. The petitioner stated further that:

[The beneficiary] is responsible for all aspects of the music program of the parish, including overseeing all music associated with worship, religious education, social ministry and evangelization of the parish, and working in cooperation with the Pastoral Team, volunteer Music Directors, and the Liturgy Committee when selecting and approving music for liturgies . . . [He] conducts an average of three liturgies each weekend and on major feast days as Choral Director, cantor, or accompanist. In addition, he is responsible for coordinating and staffing all other

liturgies. As the Director of Music Ministry, [the beneficiary] continually compiles a common body of songs for congregational singing which includes variable styles of singing and promotes the growth of musical participation in all Music Ministry groups by combining musical talent from existing groups to enhance the musical abilities of each group to foster mutual respect of all groups for the various styles of music present in the church. He also recruits and directs cantors and further strengthens the cantor pool through workshops and presentations. Additionally, [the beneficiary] explores, develops, and supports new Music Ministry groups.

As a life-long member of the Catholic church, [the beneficiary] also provides expertise to the Catholic elementary school programs through collaboration with school music teachers, providing expertise in all areas relating to musicianship, including instrumental, voice, choral conducting, and instruction of new materials. He actively participates with the school choirs, communicating and assisting in the school choirs' learning parish-wide Mass parts and liturgical music, and participating as a keyboardist, cantor or choral conductor for special liturgies. [The beneficiary] plans school liturgies as needed and teaches music for special feasts and events within the Catholic Church. He also provides Music Theory instruction to students in the elementary and youth programs, serves as a consultant to school music teachers regarding musical performance, and assists in musical and theatrical productions.

The petitioner stated that the beneficiary "will receive a salary for his work" but did not specify the amount of the salary or the hours the beneficiary was expected to work. The petitioner also provided no documentation to establish that the position of music director was primarily related to a traditional religious function and recognized as a religious occupation within the denomination and that the duties primarily related to, and clearly involved, inculcating or carrying out the religious creed and beliefs of the denomination.

In a request for evidence (RFE) dated December 8, 2008, the director instructed the petitioner to:

Provide a detailed description of the religious denomination's requirements for the proffered religious professional position. Submit a copy of the organization's constitution, by-laws, manuals, IRS Form 1023, IRS Form 990, or California Form 199 to demonstrate the petitioner's requirements. [Emphasis omitted.]

In response, the petitioner provided a copy of "A Parish Guide for Carrying Out Mission and Ministry," which it published in January 1999. The guide identifies the music director as part of the pastoral staff. A document, "Sing to the Lord: *Music in Divine Worship*," issued by the United States Conference of Catholic Bishops (USCCB) in November 2007, lists the Director of Music Ministries as one of the "Ministers of Liturgical Music." Page 47 of the document indicates:

A professional director of music ministries, or music director, provides a major service by working with the bishop or pastor to oversee the planning, coordination, and ministries of the parish or diocesan liturgical music program. The director of music ministries fosters the active participation of the liturgical assembly in singing, coordinates the preparation of music to be sung at various liturgical celebrations; and promotes the ministries of choirs, psalmists, cantors, organists, and all who play instruments that serve the Liturgy. In the present day, many potential directors of music are not of our faith tradition. It is significant as we go forward that directors of music are properly trained to express our faith traditions effectively and with pastoral sensitivity.

Although the petitioner again did not specifically state that the position of music director was a compensated position, it executed a new Form I-360, Petition for American, Widow(er), or Special Immigrant, in which it attested that the position was full time. Further, the document issued by the USCCB discusses the role of a professional music director, implying a position that is compensated.

On appeal, the petitioner submits a copy of a May 12, 2008 letter from the business manager of the St. Bartholomew Catholic Church, in which he stated that the petitioner had been employed full time at the church since June 12, 2006, at an annual salary of \$40,820.

We find that the evidence sufficiently establishes that the position of director of music minister within the petitioner's denomination relate to a traditional religious function, is recognized as a religious occupation within the denomination, and is involved in carrying out the religious creed and beliefs of the denomination.

Nonetheless, the petition cannot be approved as the record currently stands.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.

(iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

The petitioner submitted no documentation with the petition or in response to the RFE to verify the beneficiary's qualifying employment. On appeal, the petitioner submits a document signed by the business manager at the church where the beneficiary is to work stating that the beneficiary had been employed since 2006. However, the petitioner submitted no documentation to corroborate the business manager's statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner submitted none of the required documentation required by the regulation at 8 C.F.R. § 204.5(m)(11).

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.