



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 04 2015

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
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:



INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition on October 23, 2013. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the visa petition stating the reasons therein. On January 31, 2014, the director exercised her discretion to revoke the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will sustain the appeal.

The petitioner is a church that 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 “minister of music.” The director determined that the petitioner did not establish that the beneficiary was working solely as a minister during the two years immediately preceding the filing date of the petition, or that he will be performing work solely as a minister.

On appeal, the petitioner contends that it provided sufficient evidence to demonstrate that the proffered position is a religious occupation.

RELEVANT LAW AND REGULATIONS

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

Section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4), 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, 2015, 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, 2015, 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]) 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 regulation at 8 C.F.R. § 204.5(m)(2) states that to be eligible for classification as a special immigrant religious worker, the beneficiary must:

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:

(i) Solely in the vocation of a minister of that religious denomination;

(ii) A religious vocation either in a professional or nonprofessional capacity; or

(iii) A religious occupation either in a professional or nonprofessional capacity.

The regulation at 8 C.F.R. § 204.5(m)(5) provides the following definitions:

Minister means an individual who:

(A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;

(B) Is not a lay preacher or a person not authorized to perform duties usually

performed by clergy;

(C) Performs activities with a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

* * *

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.

PERTINENT FACTS AND PROCEDURAL HISTORY

On April 1, 2013, the petitioner filed the instant Petition for Special Immigrant (Form I-360) seeking to classify the beneficiary as a special immigrant religious worker to perform services as a minister of music. The director issued a Request for Evidence (RFE) to which the petitioner responded. The director approved the Form I-360 on October 23, 2013. The director subsequently issued a NOIR on December 16, 2013, based on a site visit in which the beneficiary indicated he spent 15-20 hours per week teaching Spanish.

In response to the NOIR, the petitioner submitted additional evidence, including, but not limited to: the beneficiary's weekly schedule, letters from church personnel, one page from the Church Manual, and the working policy of the . The director found that the petitioner did not submit sufficient evidence to overcome the grounds for revocation. The director stated that the record did not show that the beneficiary has been and will be performing job duties solely in the vocation as a minister. The director noted that the activity to be performed must embody the tenets of the particular religion and that the duties of the position must be directly related to the religious creed of the denomination. In

this case, the director found that some of the beneficiary's job duties do not relate to a traditional religious function and are secular. The director revoked the petition accordingly.

On appeal, the petitioner contends that the position of a teacher within a [REDACTED] school is a traditional religious occupation. According to the petitioner, it is an organizational entity that oversees 165 churches as well as 40 church schools which offer a Christian education throughout the state of Michigan. The petitioner contends that its schools ensure the principles of the [REDACTED] faith are interwoven in all aspects of the school's curriculum. It asserts the beneficiary has the requisite two-year, full-time, religious work experience immediately preceding the filing of the Form I-360 because he worked under an R-1 visa for the past three years as the church's minister of music.¹ According to the petitioner, the beneficiary was "directing the music program, teaching Spanish and otherwise ministering to the students." The petitioner asserts that the beneficiary's "[t]eaching [of] students in a [REDACTED] elementary school is a Religious occupation . . . regardless of the subject taught . . . and constitute a practice of religion."²

ANALYSIS

We conduct appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3^d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2^d Cir. 1989). Upon a full review of the record, we find that the petitioner has overcome the director's grounds for revocation. The appeal will be sustained for the following reasons.

Religious Occupation

The director found that the petitioner did not establish that the beneficiary has been, or will be, performing activities solely in the vocation of a minister pursuant to section 101(a)(27)(C)(ii)(I) of the Act and 8 C.F.R. § 204.5(m)(2)(i), and as "minister" is defined in 8 C.F.R. § 204.5(m)(5). The petitioner's claim, however, is that the beneficiary has been, and will be, employed in a religious occupation pursuant to section 101(a)(27)(C)(ii)(III) of the Act and 8 C.F.R. § 204.5(m)(2)(iii), and as "religious occupation" is defined under 8 C.F.R. § 204.5(m)(5). Therefore, the issue before us is whether the proffered position of minister of music is a religious occupation, not whether the beneficiary will work solely as a minister.

¹ The petitioner filed a Petition for a Nonimmigrant Worker (Form I-129), which was approved, granting the beneficiary status as an R-1 temporary, nonimmigrant religious worker from October 4, 2010, until March 31, 2013. The petitioner's second Form I-129 to extend the beneficiary's status was approved, granting the beneficiary R-1 status from April 1, 2013, until October 3, 2015. A NOIR was subsequently issued, based on a site visit in which evidence showed the petitioner paid the beneficiary a lower salary than it claimed it would. In addition, the beneficiary indicated during the site visit that he spent 15-20 hours per week teaching Spanish. The petitioner filed an amended Form I-129, which was denied on November 12, 2013.

² Although the petitioner indicated on the Notice of Appeal or Motion (Form I-290B) that a brief and/or additional evidence would be submitted within thirty days, to date, we have not received a brief or any additional documentation with respect to this appeal. Therefore, we consider the appeal based on the record before us.

In this case, the petitioner has established that the proffered position is a religious occupation. On the Form I-360, the petitioner described the daily duties of the position as “directing, conducting and arranging musical repertoires for instrumental and vocal performances for church worship services by musical groups and choirs He [the beneficiary] will also provide spiritual support through music for church worship services, evangelistic crusades and other meetings” In a letter submitted with the Form I-360, the petitioner asserted that the position of minister of music is a traditional religious occupation within the [REDACTED] and that the church has had a long history of recognizing this paid position. The petitioner described the position as “serv[ing] the most fundamental religious goal of the denomination to share the gospel of Jesus Christ through music.” The petitioner explained that the minister of music provides spiritual support through music for church worship services, seasonal celebrations, evangelistic and other meetings, spiritual retreats, ministerial conferences, and other religious events. The petitioner stated that the minister of music will “continue the Church’s greatest tradition of providing sacred music aimed to strengthen the faith of . . . members as well as serving as a tool for evangelizing to the outside community.”

Documentation in the record supports the petitioner’s contentions. The record includes the [REDACTED] for 2012, excerpts from the [REDACTED] working policy, and letters from church personnel discussing the importance of a [REDACTED] education, including a spiritual component through music. The record shows that since October of 2010, the beneficiary has been teaching music, choral singing, piano, chimes, and bells for the church. Church programs in the record show that the beneficiary is actively involved in worship services and [REDACTED] school. Programs and documents from the [REDACTED] the church’s school, show the beneficiary’s extensive role as the minister of music for the school.

The beneficiary’s weekly schedule shows that he engages in worship services, class preparation, and teaches students in piano, chimes, choir, bells, and voice for over thirty-five hours per week.³ The fact that the beneficiary also teaches Spanish for approximately three and one half-hours on Mondays through Thursdays does not change the fact that his music ministry primarily relates to a traditional religious function and clearly involves the religious creed and beliefs of the denomination as defined in 8 C.F.R. § 204.5(m)(5)(A) and (B). Moreover, the proffered position is a full-time position that averages more than 35 hours of work per week.

Accordingly, the petitioner has established that the beneficiary will be employed in a religious occupation pursuant to section 101(a)(27)(C)(ii)(III) of the Act and 8 C.F.R. § 204.5(m)(2)(iii), and as “religious occupation” is defined under 8 C.F.R. § 204.5(m)(5). The petitioner has also established that the beneficiary has the requisite religious work experience for at least the two-year period immediately preceding the filing of the petition as required by section 101(a)(27)(C)(iii) of the Act. The director’s finding that the petitioner did not establish that the beneficiary has been, and will be, working solely as a minister is withdrawn.

³ The director noted in the NOIR that “the beneficiary was engaged in religious work only 22.5 hours weekly.” It is unclear how the director calculated this number. According to the weekly schedule, the beneficiary teaches Spanish for fourteen hours per week and class preparation consists of four hours and twenty minutes per week.

CONCLUSION

The petitioner has established by a preponderance of the evidence that the beneficiary had the required two years of qualifying religious work experience immediately preceding the filing date of the petition and will continue to work in a full time, compensated position in a religious occupation pursuant to sections 101(a)(27)(C)(ii)(III) and 101(a)(27)(C)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.