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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

DEC 10 2004

[Redacted]

FILE: [Redacted]
EAC 02 142 53179

Office: VERMONT SERVICE CENTER

Date:

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:

[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.


Robert P. Wiemann, Director
Administrative Appeals Office

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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The petition is now before the Administrative Appeals Office (AAO) 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a religious teacher. The director determined that the petitioner had not established that the position qualified as that of a religious worker.

On appeal, counsel submits additional documentation.

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, 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).

According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation. 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 would reasonably be expected to perform services 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. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (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 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.

The petitioner states that the beneficiary served as a religious teacher for the [REDACTED] in [REDACTED] from 1995 to August 10, 1998, and with the petitioning organization since December 1999. The petitioner further states that the beneficiary's job "primarily consists of teaching and preaching Bible to youth, leading the praise and Friday night worship, visiting and counseling youths, guiding the foreign student, and participating [in] revival meeting[s] for youth and devotion as well as other related services outlined on the 'proposed duties.'" The petitioner does not indicate the compensation it paid to the beneficiary for her services; however, copies of the beneficiary's Form 1040, U.S. Individual Income Tax Return, for the years 2000 and 2001 reflect self-employment income of \$12,000 from the beneficiary's occupation of "religious teacher."

The petitioner states that the duties of the proffered job will encompass approximately 40 hours per week. The work schedule submitted by the petitioner indicates that among her other duties, the beneficiary is expected to spend eight hours "[a]ssisting [the] pastor in providing spiritual guidance, prayer and counseling to church youth members," eight hours "[p]lanning, organizing and directing religious education program," four hours "[t]eaching religious studies," and four hours "[a]ssisting [the] pastor in research and compiling documents necessary for Bible study meetings." The remainder of the beneficiary's workweek will consist of duties that are primarily administrative in nature. Therefore, the petitioner alleges that by a few hours, the majority of the duties of the proffered position are religious in nature.

The petitioner asserts that it is its practice to employ a religious teacher under the direction of the pastor. However, it provided no evidence that it has employed anyone in the position prior to the beneficiary assuming the duties. On appeal, the petitioner submits a copy of an excerpt from the *Book of Order: The Constitution of the Presbyterian Church (U.S.A.)*. The excerpt indicates that the Presbyterian Church recognizes a position of "certified Christian educator," and states that "Christian educators serving particular congregations, with the session and pastor(s) share the responsibility of providing for the spiritual growth of members for their ministry as specified in [identified sections]." The petitioner failed to submit these pertinent sections of the constitution and its relevancy to the proffered position. The excerpt also sets forth certain experience and educational requirements for the position. The petitioner also failed to provide evidence that the proffered position and that recognized and defined by the Presbyterian Church have similar requirements and duties.

The evidence submitted is insufficient to establish that the proffered position is a traditional religious function of the petitioner's denomination as the petitioner has failed to establish that the position is a permanent, full-

time salaried position within the petitioner's denomination and that it is recognized and defined by the Presbyterian Church.

Beyond the decision of the director, the petitioner has failed to establish that it has the ability to pay the beneficiary the proffered wage. 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 petitioner indicates that it will pay the beneficiary \$18,000 per year. As evidence of its ability to pay the wage, the petitioner submitted a 2001 financial statement accompanied by an independent accountant's review. The petitioner submitted no evidence of its financial status or other evidence of its ability to pay the proffered wage as of April 22, 2002, the date the petition was filed.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence.

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.