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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER
EAC 01 230 57454

Date: DEC 13 2004

IN RE: Petitioner: [Redacted]
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

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

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and 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 instructor. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director further determined that the petitioner had not established that the position qualifies as that of a religious worker or that it has the ability to pay the beneficiary the proffered wage.

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).

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases,

evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

In an undated letter signed by its director of personnel, [REDACTED] the petitioner states that it is a "denominationally unaffiliated evangelical" church, but also states that it is affiliated with the International [REDACTED] and is a fully independent and interdenominational ministry. The letter further states that the petitioner has established two affiliates, the [REDACTED] and [REDACTED]. The petitioner further states that the beneficiary will work at the petitioner's [REDACTED] headquarters.

The petitioner submitted a January 17, 1996 letter from the IRS to [REDACTED] granting it tax-exempt status under section 501(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi). The petitioner submitted a July 26, 1996 letter from the IRS to [REDACTED] granting it a similar tax-exempt status. The petitioner also submitted a copy of a New York state "Exempt Organization Certification" for exemption of the petitioner from state and local sales and use tax, and copies of its articles of incorporation and those of [REDACTED]. We note that while the petitioner states that it established [REDACTED] as an affiliate, the articles of incorporation reflect that [REDACTED] was incorporated in 1994 while the petitioner was incorporated in 1997. Although the two organizations appear to share a common director, neither organizing instrument refers to the other organization.

The petitioner failed to submit evidence of its tax-exempt status from the IRS or evidence that Metro Ministries International, Inc. is covered under a group exemption granted to the petitioner. The petitioner further failed to submit evidence to establish that [REDACTED] is tax exempt as a religious organization. Although the petitioner submitted a copy of its articles of incorporation and those of Metro Ministries International, Inc., it failed to submit a copy of a completed IRS Form 1023 as required by 8 C.F.R. § 204.5(m)(3)(i)(B).

The petitioner's evidence is insufficient to establish that Metro Ministries International, Inc. is a bona fide non-profit religious organization, exempt from taxes as required by the statute and regulation.

The director determined that the petitioner had not established that the position qualified as that of a religious worker. 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.

In her undated letter, [REDACTED] states that the beneficiary will be employed as assistant pastor to the senior pastors of its Adult Spanish Department. In that role, the beneficiary's job duties will "aid in the continuation of motivating, guiding and controlling the overall operation of the Adult Spanish Ministries." According to the petitioner:

[The beneficiary's] specific duties will include providing direction on a pastoral, spiritual, and Biblical level to Men's Cell Group Leaders . . . directly oversee the operations of 10 men's cell groups . . . He will be responsible for teaching, reporting, and coordinating meetings with the Senior Pastor of the Spanish Ministries and other cell group teachers and leaders. He will hold monthly meetings with the host and other teachers of Cell Groups. He will be the major communicator between the members of the church congregation and the Senior Pastor. [He] will be responsible to [sic] develop curriculum to be taught and used in the cell groups throughout the city, to teach and train new religious instructors, observe the happenings of the cell groups and teach sessions on his own when necessary. He will also attend Spanish Church Leadership meetings each week [and] report to the Senior Pastor about the performance of the Cell Groups.

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 submitted a copy of a job description in which it lists the essential duties, education and experience requirements of the job. We note that the job description was prepared and approved after the filing date of the visa petition. We further note that, while the petitioner states that the proffered position is traditionally a permanent, full-time salaried position within the denomination, it provided no substantiating evidence. [REDACTED] states that the beneficiary has "volunteered in this capacity on a full-time basis" since 2001. We note that the petition was filed on May 1, 2001.

The petitioner submits copies of certificates which purport to attest to training completed by the beneficiary. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner's evidence does not establish that the proffered position is a traditional religious function within its denomination.

Further, the evidence does not support a finding that the beneficiary was continuously engaged in this occupation for two full years prior to the filing of the visa petition. As noted above, the petitioner stated that the beneficiary worked in the position as a volunteer beginning in 2001. The petitioner also indicated that the beneficiary had performed volunteer work with the petitioner since 1997, receiving charitable donations for his work and, beginning in May 2001, a housing reimbursement of \$90.00 per week. The evidence does not establish that the voluntary work performed by the beneficiary prior to 2001 is the same or of a similar nature to the proposed position.

Additionally, as evidence of this work, the petitioner submitted two affidavits, one signed by two church pastors and the other signed by two church members. The affiants stated that the beneficiary has six years "dedicated service" as an associate pastor with the petitioner, and received charitable donations for his services. However, the petitioner submitted no other evidence, such as a work schedule or duties, or a payment voucher, to corroborate these statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

We note further that in a letter dated May 2, 2002, written in support of an application for an R-1, nonimmigrant religious visa, a year after this visa preference petition was filed on May 1, 2001, [REDACTED] stated:

[The beneficiary] will develop a biblically based curriculum for our Spanish religious instruction ministry . . . Our religious instruction ministry entails teaching 1,500 children weekly in alternating sessions utilizing the service of numerous instructors . . . In addition to curriculum development and instruction, [the beneficiary] will be responsible for supervising and training our religious teaching volunteers to assist in the presentation of lessons at religious instruction sessions. In addition [he] will be assigned a visitation route . . . and will be responsible for the supervision and furtherance of the bus ministry, church teen activities and the presentation of the Gospel of Jesus Christ in a manner that will enhance the lives of the children in the community.

The petitioner submitted no evidence to explain the difference in the positions that it alleges the beneficiary will hold. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The evidence of record casts doubt on the legitimacy of the proffered job and the job offer.

The director also determined that the petitioner had not established that it had 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 stated it would pay the beneficiary an annual salary of \$11,440 plus providing him with free housing and utilities. The petitioner submitted an audited financial statement reflecting its financial status as of June 30, 2001. The statement reflects net current assets in excess of \$1.4 million.

Although, the evidence is sufficient to establish that the petitioner has the ability to pay the beneficiary the proffered wage, its failure to establish that it is a bona fide religious organization, that the proffered position is a traditional religious function within its organization, or that it has extended a qualifying job offer, requires dismissal of this appeal.

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.