U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 17 2004

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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner 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 perform services as an assistant minister/pastoral assistant at an annual salary of $24,000.

The director denied the petition in a decision dated March 11, 2003. The director determined that the petitioner had not established that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

On appeal, counsel for the beneficiary submits a brief statement and additional documentation. Counsel asserts that the beneficiary has the required two years of full-time experience, and the theological training and education to perform the duties of the position offered. Counsel further asserts that the petitioner is a bona fide religious organization and has available funds to pay the beneficiary the proffered wage.

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;
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> (ii) seeks to enter the United States--
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> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> (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
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> (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)(1) states, in pertinent part:

> 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 nonprofit 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 record reflects that the beneficiary is a native and citizen of Ecuador who was last admitted to the United States as a nonimmigrant visitor for pleasure (B-2) on December 15, 2002, with authorization to remain until June 13, 2003. The Form I-360, Petition for Amerasian, Widow or Special Immigrant, indicates that the beneficiary has not been employed in the United States without permission from Citizenship and Immigration Services (CIS). The Form I-360 also indicates that, at the time of filing the petition on February 19, 2002, the beneficiary was not physically present in the United States.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements. The sole issue raised by the director to be discussed in this proceeding is whether the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> 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 February 19, 2002. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two years beginning on February 19, 2000.

In support of the petition, the petitioner submitted documentation including: a certificate, dated July 1999, issued to the beneficiary for having satisfactorily participated in a workshop for seminary and biblical institution teachers of Ecuador; a 1993 document stating that the beneficiary was re-nominated as National Vice Superintendent of the Evangelist [redacted] and a certificate stating that the beneficiary had been pastor of Iglesia [redacted] in Ecuador from 1996 until at least September 2001. The petitioner also submitted a letter, dated January 8, 2003, from the petitioner's authorizing official and senior pastor, [redacted] states, in part, that:

> [The beneficiary] has a rich history of service to both the Christian and secular Latino communities, thus enabling him to effectively close the gap between the two. . . . Having had the opportunity to administrate a school as well as the formation of other community organizations in his homeland of Ecuador, [the beneficiary's] services are greatly needed by this church.

[redacted] also describes the duties of the proposed position. He states that the church is working toward the formation of a community center in Woodside, New York, and that the beneficiary is to assist in the formation of the center and in the implementation of programs at the center to assist immigrant families.

On appeal, counsel submits additional documentation, including:

- A letter, dated March 27, 2003, from [redacted] National Superintendent of the Evangelical Conference of the Assembly of God of Ecuador. [redacted] asserts, in part, that the beneficiary has served as pastor of the [redacted], located in Guasmo Norte, Ecuador, since 1976.

- Documentation from [redacted] indicating that the beneficiary was provided with "charity" of $700.00 per month from March 2002 through March 2003.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. *See* H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he or she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963); *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he or she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who, in accordance with their vocation, live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To be otherwise would be outside the intent of Congress.

Here, the petitioner has submitted no evidence that the beneficiary's services as a pastor in Ecuador were on a full-time, salaried basis. Although the petitioner has submitted documentation indicating that the applicant received "charity" of $700.00 per month from March 2002, to March 2003, the petitioner has submitted no

evidence of the beneficiary's full-time, salaried employment as a pastor from February 19, 2000 through to the date the petition was filed.

Based on a review of the record, the AAO concludes that the petitioner has not overcome the director's concerns. The petitioner has not established that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition. Therefore, the petition must be denied.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that: (1) the petitioner qualifies as a bona fide non-profit religious organization; (2) the petitioner has extended a qualifying job offer to the beneficiary; (3) the petitioner has had the ability to pay the beneficiary a wage as of the date of filing the petition continuing through the beneficiary's obtaining lawful permanent residence; (4) the beneficiary is qualified to engage in a religious vocation or occupation; and (5) the proposed position qualifies as a religious vocation or occupation. Since the appeal will be dismissed for the reason discussed, these additional grounds for denial of the petition need not be examined further.

In reviewing an immigrant visa petition, CIS 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 beneficiary in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of B. 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.