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

U.S. Citizenship and Immigration Services

FILE: WAC 01 218 54733 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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:

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner indicates that it 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 employ him as a liturgy coordinator.

The director determined that the petitioner had not established that the beneficiary was engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

On appeal, counsel submits a brief and 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--
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> > (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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

> 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 issue raised by the director is whether the petitioner has established that the beneficiary was engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition. The director determined that the beneficiary's two years of experience in the proffered position could not be considered qualifying experience in a religious vocation or occupation because the beneficiary was not a full-time, salaried religious worker during the requisite period.

Pursuant to 8 C.F.R. § 204.5(m)(1):

> 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 April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious vocation or occupation from April 30, 1999 to April 30, 2001.

The petitioner indicates on the Form I-360, Petition for Amerasian, Widow or Special Immigrant, that the beneficiary entered the United States on July 28, 1997, as a nonimmigrant B-2 visitor with stay authorized to January 27, 1998. The beneficiary has remained in the United States in an unlawful status since that date. The petitioner states that the beneficiary served as a music director for various Catholic parishes in the San Francisco Bay Area during the two-year qualifying period, and that he was paid an honorarium by various churches and individuals for his assistance in arranging bilingual services, weddings, and funerals.

Counsel stated in a letter dated January 29, 2002:

> [T]he beneficiary lived in the facilities at [redacted] and was provided food, utilities and other incidental living expenses, from April 1999 until April 2000. This arrangement was in consideration of [the beneficiary's] service to the church which continues until the present time. During the period in question, [the beneficiary] was in charge of liturgical music for Hispanic masses. He arranged ceremonies that are particular to [redacted] such as [redacted] confirmations, marriages and celebrations in honor of [redacted] the patron saint of Mexico. . . . During the period in question, [the beneficiary] worked no less than 20 hours per week at St. [redacted] for which he received no direct monetary compensation. However, like many religious church workers, [the beneficiary] was not paid a salary, but did receive full maintenance and support. Often, parishioners compensated [the beneficiary] directly for helping arrange baptisms, weddings, first communions, funerals, and other religious

> celebrations for individuals. Payment was entirely voluntary and no set amount was ever requested.
>
> Also during the period in question, [the beneficiary] worked at [redacted] providing liturgy coordination every weekend during Spanish and bilingual services, as Choir director every weekend during Spanish, Bilingual and Trilingual services, and as coordinator of music for major religious events such as Lent, Easter, and Christmas. . . .
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> From April 2000 until April 2001, [the beneficiary] lived with [redacted] who met him at church. She provided room and board to him, without charge on account of his service to the church community. . . .
>
> [The beneficiary] continues to receive compensation on a voluntary, as needed basis, usually in connection with an individual's special ceremony. The Petitioner is anxious to put the beneficiary on the payroll so that he might receive compensation sufficient to maintain himself without reliance on the tithes and gifts of appreciative parishioners. . . .
>
> Although the beneficiary has never been on the payroll of any parish, he is well known at a multitude of churches for his voluntary work as a bilingual liturgical director. He has always offered his services to the church without expectation of remuneration and he has received support and maintenance from the parishioners and the priests. During the period in question, he worked in excess of 30 hours per week, dividing his time principally between [redacted] and to a lesser extent, with various parishes on an as needed basis.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has 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).

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).

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) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963.

In line with these past decisions and the intent of Congress, it is clear, therefore, 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 find otherwise would be outside the intent of Congress.

In this case, the beneficiary served as a liturgy coordinator for Catholic parishes in the San Francisco Bay Area on a part-time, voluntary basis during the two-year qualifying period. The beneficiary's work experience in the proffered position cannot be considered qualifying work experience in a qualifying religious vocation or occupation because it was not full-time, salaried employment. The petitioner's description of the duties performed by the beneficiary during the period in question is not sufficient to establish that he worked full-time during the entire two-year qualifying period. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, although the petitioner states that the beneficiary received "full maintenance and support" during the qualifying period, no evidence has been provided to corroborate this statement. Therefore, the petitioner has not established that the beneficiary was engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition, and the petition must be denied for this reason.

Beyond the decision of the director, the petitioner has also failed to establish that it is a bona fide nonprofit religious organization as required at 8 C.F.R. § 204.5(m)(2). The petitioner has not provided a letter from the Internal Revenue Service (IRS) recognizing it as exempt from taxation under section 501(c)(3) of the Internal Revenue Code as it relates to religious organizations, nor has the petitioner submitted the documents required by the IRS to determine such eligibility, as stated in 8 C.F.R. § 204.5(m)(3)(i)(A) or (B).

The petitioner has also failed to establish that it has the ability the beneficiary the proffered wage. The petitioner has not provided copies of its financial reports, federal income tax returns, or audited financial statements as required at 8 C.F.R. § 204.5(g)(2).

Additionally, the petitioner has failed to establish that the proffered position qualifies as a religious occupation as defined at 8 C.F.R. § 204.5(m)(2). The petitioner has not provided any evidence to show that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, or that the position is traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning religious organization. The petitioner has identified several aspects of two positions, a coordinator of Spanish-speaking ministry, and also, the duties of a choir director in the evidence submitted.

Finally, the petitioner has failed to establish that the beneficiary is qualified for a religious worker position within the religious organization as required at 8 C.F.R. § 204.5(m)(3)(ii)(D). The petitioner has not provided any information regarding the requirements for the position or provided any evidence to demonstrate how the beneficiary satisfied such requirements. Although the beneficiary states that he studied music for seven years at the [redacted] of Chile, the petitioner has not provided any evidence to corroborate this statement.

In reviewing an immigrant visa petition, Citizenship and Immigration Services 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 alien in the manner stated. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of 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.