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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[REDACTED]

File: [REDACTED]

Office: VERMONT SERVICE CENTER

Date: **DEC 13 2003**

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

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

DISCUSSION: The immigrant visa petition was denied by the Director of the 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 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), to employ her as a minister. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition. The director further determined that the petitioner had not established that the proffered position qualified as that of a religious worker.

On appeal, counsel submits a brief and additional evidence.

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).

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.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue to be addressed in this proceeding is whether the petitioner has established that the proffered position qualifies as that of a religious worker.

On appeal, counsel asserts that the duties of the position are those normally performed by ordained ministers as described by the Department of Labor (DOL) in its *Occupational Outlook Handbook (Handbook)*.

The word "minister" is defined at 8 C.F.R. § 204.5(m)(2) as follows:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

When determining whether a particular position qualifies as that of a religious worker, CIS considers the duties of the specific

position, rather than relying on the job title alone. Although counsel asserts that the duties of the position are those of a minister as described by the DOL in the *Handbook*, the evidence of record does not support a finding that the position qualifies as that of a religious worker.

The petitioner describes the duties of the position as follows:

1. Leading the congregation in worship and prayer services.
2. Preaching to the congregation. The Holy Bible is read by the Minister who provides the interpretation of the readings and teaches the Christian messages contained in the Bible by preaching the word of God to the members of our congregation.
3. Conducting the various worship services of our faith. A Minister has the authority to lead the congregation in all ceremonies such as Baptism, Communion, Weddings and funeral services.
4. Perform Benediction to the members of the congregation at the conclusion of all religious ceremonies. . . .
5. Visiting the sick and needy members of the congregation and administering spiritual counseling.

According to evidence contained in the record of proceedings, the petitioning church belongs to a United States religious organization that includes five local churches in the New York City area. The record contains a document entitled "Qualifications, Duties, Powers and Responsibilities of Officers, Boards and Committees." This document is printed on plain paper rather than on letterhead stationery, and is not signed or dated by any officials of the United States religious organization. Indeed, the name of the United States religious organization does not even appear on the document. Instead, it bears an ink stamp reflecting the name and address of the petitioning church. The document describes the responsibilities of ministers within the religious organization as follows:

The clergy may ordain as a minister, a member of the organization who is in good standing and who have [sic] completed the required course of study, if any to show proficiency in and understanding of the Bible as the Word of God. Such person may be endowed with the responsibility and power to act solely within a specific area of church/religious functioning or may be

a minister with the powers and responsibilities of a Pastor except that he/she is not responsible for a local church. (Examples of specified areas of ministry include Evangelist, Music and Youth Affairs). Ordination documents should refer to ministers by their specific area of responsibility when and where necessary.

Duties and Responsibilities (generally)

- Provides assistance to the church pastor in all areas, including leading divine worship prayer and invocation, instructing in Biblical doctrine through preaching and lecturing, and informing and advising the membership concerning Church rules and regulations,
- Carry out pastor's regular local church functions during periods of absence of both pastor and assistant pastor
- May perform weddings (if registered with the relevant governmental body, else under the supervision of registered minister), funerals, and baptisms, and administer Holy Communion.
- Visits the sick and/or homebound members of the congregation to provide spiritual counseling.

The majority of these duties can be, and often are, performed by lay preachers. For example, lay preachers lead congregations in worship, preach and read the Bible at services, teach Bible study, visit the sick and elderly, and provide spiritual counseling to members of the congregation. The regulation specifically excludes lay preachers from the definition of "minister." It is concluded that the petitioner has not submitted sufficient evidence to establish that the proffered position qualifies as that of a religious worker, and the petition must be denied for this reason.

The second issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

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 January 16, 2001. Therefore, the petitioner must establish that the beneficiary was engaged continuously as a religious worker from January 16, 1999, until January 16, 2001. The petitioner indicated on Form I-360, Petition for Amerasian, Widow, or Special Immigrant, that the beneficiary last entered the United States on June 19, 1993, as a nonimmigrant B-2 visitor with stay authorized to December 18, 1993. The beneficiary has remained in the United States in unlawful status since that date.

On appeal, counsel asserts that there is no requirement in the statute or the regulations that an alien's two years of experience in the religious vocation or occupation must be full-time, salaried employment.

Counsel's assertion on appeal is not persuasive. 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); *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.

The petitioner states that the beneficiary has served the church as a full-time minister since February 8, 1998. In response to the director's request for additional evidence, the petitioner submitted an Internal Revenue Service (IRS) Form 941, Employer's Quarterly Tax Return, for the quarter ending June 30, 2001. According to this document, the petitioner did not pay any wages during that period. Indeed, a handwritten notation on the document specifically states: "NOTE: We do not have any employees!!."

The petitioner also submitted a letter dated November 19, 2001, from an individual who identifies herself as Rev. Dr. Gweneth Scantlebury Rowe. Rev. Rowe states that she is the beneficiary's aunt, and indicates that she has been "assisting" the beneficiary with her living expenses since the beneficiary entered the United States in 1993. While the petitioner and counsel indicate that the beneficiary served as a full-time minister during the two-year qualifying period from January 16, 1999 to January 16, 2001, she was not paid a salary for her services as a minister by the petitioning church. The church claims to have no employees, and the beneficiary was receiving financial support from her aunt during the requisite period.

Counsel contends that it is the intent of Congress to require paid experience in employment-based immigrant visa petitions only when it is specifically stated in the statute. Counsel has not provided any independent evidence to corroborate his assertion. It was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

Counsel cites the holdings reached in *Tenacre Foundation v. INS*, 892 F.Supp. 289 (DC Col, 1995), *aff'd* 78 F3d 692 (App DC, 1996) and *Matter of Dupka*, 18 I&N 282 (Dist. Dir. 1981) respectively. Counsel has not, however, provided any evidence to demonstrate that the facts and issues in the cases cited parallel those in the

instant case.

Finally, counsel cites an unidentified internal memorandum issued by the Office of Service Center Operations on February 20, 1992, as follows:

The alien's qualifying experience for the previous two years and the work to be done in the United States must be full-time. In the immigrant context, full-time work is generally considered to be 35-40 hours per week or whatever is appropriate for the occupation (emphasis added by counsel).

Counsel states:

Significantly, the memorandum refers only to qualifying experience, rather than employment, and states only that the qualifying experience must be full-time. Nothing in the language of the memorandum indicates that such qualifying experience must be paid experience.

The memorandum cited by counsel does not address the issue of whether an alien's work experience in the religious occupation can be obtained on a voluntary basis or must be paid employment. The memorandum merely states that, in the immigrant context, full-time employment is generally considered to be 35 to 40 hours per week. The fact that the beneficiary worked full-time during the qualifying period is not under discussion in this proceeding. The memorandum cited by counsel has no relevance to the question of whether the beneficiary was a salaried religious worker during the period from January 16, 1999 to January 16, 2001. In view of the foregoing, it is concluded that the petitioner has failed to establish 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 also be denied for this reason.

Beyond the decision of the director, the petitioner has failed to establish that it has the ability to pay the beneficiary the proffered wage or that it has extended a valid job offer to the beneficiary. The petitioner has also failed to establish that the beneficiary is qualified for the position within the religious organization. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

In reviewing an immigrant visa petition, the AAO 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.