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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

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 20 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:

SELF-REPRESENTED

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 minister of music. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that the position qualified as that of a religious worker. The director further determined that the petitioner had not established that the beneficiary was qualified for the position within the petitioning organization.

On appeal, the petitioner submits a letter 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--
>
> > (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.

The petitioner submitted a copy of a letter from the Florida Department of Revenue, indicating that the state of Florida had exempted the petitioner from sales and use tax. The petitioner also submitted a copy of a church flyer and a copy of its listing in the phone directory.

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 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 church which contains a proper dissolution clause and which specifies the purposes of the organization.

The evidence submitted by the petitioner is insufficient to establish that it is a bona fide nonprofit religious organization as required by the statute and regulation.

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on April 10, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister of music throughout the two-year period immediately preceding that date.

The petitioner identifies the "major responsibility" of the minister of music as "running [] all music programs and to equip our members with the necessary knowledge and skills in vocal choral and dramatic presentation." The petitioner describes the job duties further to include: developing all music programs in the church, lecturing on the "Layman's School of Training," assisting in the administration and office functions of the church, and assisting the pastor as secretary.

In his letter of June 24, 2003, the petitioner's pastor stated that the beneficiary had proved to be an asset to the church by volunteering her time to help in the following areas: "actively raising up" musicians and singers; coordinating with home cell leaders and providing a weekly Bible study outline and music program; and

managing the church office through various duties, including data input, graphic design, updating mailing lists and membership records, correspondence with members and visitors, "stock taking and buying of stock for church bookshop," acting as personal secretary to the pastor and coordinating his international travel itinerary, mediating with the TV station regarding the pastor's weekly TV program, and hosting guest speakers.

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, with the addition of "a number of safeguards . . . to prevent abuse." 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/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/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).

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, 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/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 generally salaried. To hold otherwise would be contrary to the intent of Congress.

The petitioner states that the beneficiary traveled to the United States in December 1999 to "visit" the petitioner. The petitioner submits no evidence as to when the beneficiary first began the job duties that the petitioner states that she performed during the period prior to the filing of the visa petition. Further, the record does not establish that the beneficiary worked primarily in a religious occupation during this period. The petitioner failed to provide details of the time the beneficiary spent engaged in each of her various duties. The beneficiary identified her occupation as that of office manager and staff. The list of duties she performed

suggests that this was an accurate description of her primary job function. The evidence submitted does not establish that the beneficiary was primarily engaged in other than secular employment during the qualifying two-year period.

The petitioner alternately states that the beneficiary served as a volunteer with the petitioning organization, that she received donations from the church, which also provided her with transportation, housing and living expenses, and that she was financially supported by her church in South Africa. Documentation submitted with the petition and in response to the director's request for evidence (RFE) dated March 24, 2003, did not corroborate the petitioner's statements.

On appeal, the petitioner submits a copy of a telefax from its certified public accountant (CPA) in Tulsa, Oklahoma, who provides what the CPA describes as a list of payments paid to the beneficiary for the years 2000 through 2002. The documents appear to reflect that the beneficiary received $575.00 in 2000, $4,900.00 in 2001, and $8,320.00 in 2002. According to the petitioner, these were funds wired to it, presumably by the beneficiary's church in South Africa.

The petitioner also submits a copy of a letter from the financial administrator of the Church of Power in South Africa. The letter indicates that as attaching copies of the bank notification of funds wired to the petitioner for the beneficiary's salary and living expenses. The documents attached to the letter apparently indicate that in March, April and May 2000, the South African church transferred funds of approximately $270.00 per month for the beneficiary's living expenses. Other documentation submitted for 2001 and 2002 reflect transfers to the petitioner, with some designated as contributions, capital transfers, or living expenses that do not specifically name the beneficiary as the intended recipient.

The petitioner provides no evidence to substantiate its statements that it provided the beneficiary with transportation, housing and living expenses. 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). Additionally, we note that the documentation from the CPA does not reflect any payments to the beneficiary from April 2000 to April 2001, and the record does not otherwise reflect that the beneficiary was employed during this period.

The evidence submitted by the petitioner is insufficient to establish that the beneficiary was continuously employed in a religious occupation or vocation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following definition of a "religious occupation":

> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious

broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

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.

As noted above, the petitioner failed to provide a comprehensive schedule of the duties of the proffered position. The record is unclear as to whether the duties of the proffered job are primarily religious in nature. The description of the work performed by the beneficiary prior to the filing of the visa petition, which the petitioner states encompasses the duties of the proffered position, does not establish that the duties of the proffered position are not primarily secular in nature. The evidence does not establish that the proffered position is a religious occupation within the meaning of the regulation.

The petitioner stated that the beneficiary's duties as minister of music entail running "all music programs and [] equip[ping] members with the necessary knowledge and skills in vocal choral and dramatic presentation." The director determined that the petitioner had not established that the beneficiary was qualified for the position of minister of music within the organization.

The petitioner stated that the beneficiary's music experience in her church in South Africa consisted of being the lead female vocalist in a 50 voice choir, assisting in song selection and "preparation," coordinating music rehearsals, and serving as liaison between the musicians and choir. According to the petitioner, the beneficiary also assisted in voice training, annual musical productions, cast selection and voice training.

On appeal, the petitioner submits a December 1999 certificate from the Church of Power, indicating that the beneficiary had completed the "School of Psalmody." A document carrying the Church of Power address in Cape Town, discusses the requirements for an "internship for minister of music." The requirements address vocal music, musicianship skills (leading a church band), choral training, church production, performance requirements, and ministry of the psalmist (song writing and history of music through the bible). The document indicates that "[s]uccessful completion of this internship course qualifies student to become a certified full-time Minister of music at Church of Power." The document suggests that the beneficiary completed the internship for minister of music.

While the record does not establish that the beneficiary worked full time as a minister of music after receiving her certificate from the "School of Psalmody," the evidence is sufficient to establish that she meets the minimum requirements for the position offered by the petitioner.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay 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 $2,500 per month. It submits a copy of financial documentation for 2000, which is not relevant to this petition, and a copy of a "Statement of Revenue & Expenses-Cash Basis" for the year 2002.

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. Further, the document submitted by the petitioner reflects that the petitioner had a negative cash flow for the year 2002. The evidence submitted does not establish that the petitioner had the ability to pay the beneficiary the proffered wage as of the date the petition was filed.

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.