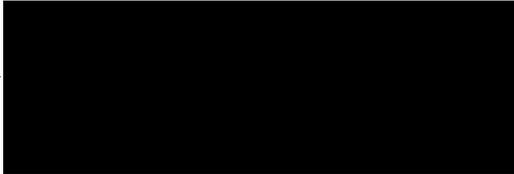




U.S. Citizenship  
and Immigration  
Services

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*01*

FILE: [REDACTED]  
SRC 03 213 51948

Office: TEXAS SERVICE CENTER Date: DEC 22 2005

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:

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. 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 beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the position qualified as that of a religious worker, or that it had extended a qualifying job offer to the beneficiary.

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 first issue on appeal is whether the petitioner established that it qualifies as a bona fide tax-exempt nonprofit religious organization.

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 a request for evidence (RFE) dated March 4, 2005, the director instructed the petitioner to submit a copy of its certification by the IRS as a religious organization exempt from taxation under section 501(c)(3) of the IRC or evidence of its coverage under a group exemption granted to a parent organization.

The petitioner submitted a copy of its certificate of incorporation; however, it did not submit a copy of its organizing instrument. The petitioner submitted no other evidence of its tax-exempt status as a bona fide religious organization.

The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or submit evidence to comply with the provisions of 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The organization can establish eligibility under 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and

- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

On appeal, the petitioner resubmitted a copy of its certificate of incorporation.

The director, prior to denying the petition, did not provide the petitioner with an opportunity to submit the materials outlined in the Yates memorandum, and thereby demonstrate that it qualified as a tax-exempt religious organization. This deficiency is not fatal to the director’s decision, however, because (as discussed below) we have affirmed one of the other stated grounds for denial, which clearer evidence of qualifying tax-exempt status would not overcome.

The second issue on appeal is whether the petitioner 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.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. 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 regulation indicates that the “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 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 August 8, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In a letter dated March 5, 2005, Dr. Rev. [REDACTED] the executive director of the Philadelphia Baptist Mission in Bangalore, Karnataka (India), stated:

[The beneficiary] has been working with Philadelphia Baptist Mission since 1987 in a voluntary way and . . . in 1997 he has been to Canada for religious education and returned after being ordained there, in 1999. Ever since, he has been inducted back as the Treasurer as well as the Administrative Associate Director of the Mission as he now fulfills the position of a Missionary/Religious Minister. His regular duties, include evangelism, establishing churches, schools, supervising building constructions, organizing your camps and crusades, translation of the Bible into native languages, overseeing the Bookstore sales and transactions, and teaching at the Bible College . . .

He is to be at the Mission office from 10 a.m. to 5 p.m. from Monday to Friday. He is to supervise and administer to the requirements of the churches, Bookstore, and Bible Institute. He is to be available for preaching and teaching services in the churches on Sundays and Wednesdays.

The petitioner submitted a copy of a flyer for The Baptist Institute of Biblical Learning and Education, which lists the beneficiary as "secretary/professor." The petitioner submitted no other documentary evidence of the beneficiary's employment with the Philadelphia Baptist Mission. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In a letter dated May 9, 2005, the petitioner stated:

The applicant . . . has been a member of [the petitioning organization] from 1979, and is a member of the Missionary family, which was sponsored and sent by from [sic] our church to work in India in 1980. Since he has been working voluntarily ever since from [sic] 1987 in a more responsible way, while undergoing his secular education . . . He has been voted by our church to be trained and to work I full capacity in the same vocation there in India at the same time. He has been paid by our church from 1997 to undergo his religious education (M.A. in Biblical Studies from Louisiana Baptist University, USA), and to be better equipped and to work in the required field at Philadelphia Baptist Mission, which is our registered organization in India.

The petitioner submitted copies of monthly checking account statements of "East Side Baptist Church Rufus Account" for the relevant two-year period. The account address is listed as that of the petitioner and reflects monthly deposits ranging from zero in September 2001 to \$1,748.53 in October 2002. The petitioner does not identify the source of the money deposited into the beneficiary's account. The petitioner submitted no documentary evidence to corroborate the beneficiary's work during the qualifying period. *Id.*

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.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

On appeal, the petitioner submits an undated letter from Rev. [REDACTED] who states that the beneficiary kept office hours from 10 a.m. to 5 p.m., Mondays through Fridays, and that his other duties consisted of teaching one subject each semester at the Bible College, supervising the bookstore, supervising building construction, organizing youth camps and crusades, evangelism and mission works, preaching, and conducting in-home Bible studies.

The petitioner also states on appeal that the beneficiary volunteered his services in the "religious sense," in that he voluntarily chose to pursue a religious instead of a secular occupation, and that he was fully compensated for his work with the petitioning organization during the qualifying two-year period. As evidence, the petitioner submits copies of wire transfer orders to the State Bank of India with the beneficiary listed as the receiving beneficiary. The wire transfers range in amount from \$500 to \$1,100, with no transfers made for September 2001 or July

2003. The record does not establish that these payments were for the purpose of compensating the beneficiary for his work. Further, the bank account maintained by the petitioner, allegedly on behalf of the beneficiary, indicates deposits that appear to be in addition to the payments received by the beneficiary at the State Bank of India. These payments exceed the compensation allegedly paid by the petitioner, and no evidence in the record establishes the source of these funds. The petitioner submitted no other evidence of the beneficiary's work with the Philadelphia Baptist Mission. *Matter of Soffici*, 22 I&N Dec. at 165.

The evidence does not establish that the beneficiary was continuously employed as a minister throughout the two years immediately preceding the filing of the visa petition.

The third issue on appeal is whether the petitioner established that the position qualifies as that of a religious worker.

Pursuant 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. 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 proffered position is that of a minister. According to the petitioner in its letter of May 9, 2005, in the proffered position:

[The beneficiary will] take up full-fledged establishing of like faith churches among Asians [and] Indians here, and thereby create programs and take up take of [sic] those in the churches in a professional capacity. He will be paid a minimum of \$10000 per month initially and will be given housing also. He will also be used in and by like faith churches, who will compensate him for the work done for them.

On appeal, the petitioner stated that the duties of the position would include "visitation and evangelism" preaching, establishing Bible study groups, and establishing churches, and that the duties will encompass more than 40 hours per week.

The record sufficiently establishes that the position qualifies as that of a religious worker within the meaning of the statute and regulation.

The fourth issue is whether the petitioner established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The director determined that as the petitioner had not established that the position qualifies as that of a religious occupation, the petitioner has not established that it has extended a qualifying job offer to the beneficiary. We withdraw this determination of the director, as the evidence establishes that the proffered position qualifies as that of a religious occupation within the meaning of these proceedings. Further, the petitioner states that the position will be full-time and will be compensated at the rate of \$1,000 per month plus housing.

The evidence sufficiently establishes that the beneficiary has extended a qualifying job offer to the beneficiary.

Beyond the decision of the director, the petitioner has not established that it has 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.

As discussed above, on appeal, the petitioner submitted copies of wire transfer orders indicating that it had wired money to India on behalf of the beneficiary. However, the record does not indicate that these funds were compensation for the beneficiary's services and were not paid consistently in the amount of the proffered wage.

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 primary evidence.

The petitioner has not established that it consistently paid the beneficiary the proffered wage in the past. Further, the petitioner has not submitted any of the required types of primary evidence. Therefore, the petitioner has not established that it has the continuing ability to pay the beneficiary the proffered wage. This deficiency constitutes an additional ground for which the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.