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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

PUBLIC COPY

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: MAY 20 2008
SRC 97 249 52493

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:
[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.

Marie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke the approval of the preference visa petition and her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on March 25, 2004. Counsel appealed the decision by filing a Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals of Decision of an INS Officer. Pursuant to 8 C.F.R. § 204.5(n)(2), jurisdiction for an appeal of the denial of an employment based visa petition lies with the Associate Commissioner of Examinations (the Administrative Appeals Office (AAO)). The petition is now before the 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 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, that the position qualified as that of a religious worker, or that the petitioner had the ability to pay the proffered wage.

On appeal, counsel submits additional documentation. We note that counsel delayed sending a supporting brief, "awaiting" the schedule of the Board of Immigration Appeals (BIA). As noted above, the BIA does not have jurisdiction over this employment-based petition, and no brief has been received by the AAO in support of this appeal. Therefore, the record will be considered complete as presently constituted.

Counsel also requested oral argument.

The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved. In fact, counsel set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security, "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the BIA has stated:

In Matter of Esteime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to

revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Esteime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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

In a memorandum dated December 17, 2003, [REDACTED] Associate Director of Operations for Citizenship and Immigration Services (CIS), provided additional guidance on the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B) in instances where the petitioner does not have a letter from the IRS granting it tax-exempt status as a religious organization or where the petitioner's status as a religious organization is not clear.

The memorandum requires the following documentation to establish "the religious nature and purpose of the organization":

- (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 memorandum does not state that the petitioner must provide one item from the above list. Rather, *all* of the listed documents, "at a minimum," are necessary to establish the religious nature of the petitioner's activities.

With the petition, the petitioner submitted a copy of a June 18, 1996 letter from the IRS to the Assembleia de Deus de Boston, mailed to an attorney's address in Fall River, MA. The letter notified the organization that it had been granted tax-exempt status under section 501(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i). The copy of the letter was of extremely poor quality.

In a request for evidence (RFE) dated November 19, 1997, the director again requested the petitioner to submit evidence of its tax-exempt status. The director did not, however, further specify the reason for her request. In response, the petitioner submitted a copy of Certificate of Exemption granted to it by the state of Massachusetts. The director subsequently approved the petition on April 1, 1998.

The petitioner filed the petition on September 26, 1997. At that time, attorney [REDACTED] represented the petitioner as counsel. Subsequently, on May 23, 2003, Javier E. Lopera was convicted on several counts relating to immigration fraud. Because [REDACTED] was involved in facilitating numerous fraudulent immigration petitions, the director instructed the petitioner to submit additional documentation to establish that the petitioner had, in fact, filed a credible visa petition based on a bona fide job offer.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, in fact lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). The director indicated that the approval of the petition would be revoked unless the petitioner was able to provide credible documentation in response to the Notice of Intent to Revoke approval of the visa petition (NOIR). The director subsequently found that the petitioner was unable to overcome the grounds for revocation and revoked approval of the petition.

The first issue on appeal is whether the petitioner established that it qualified as a bona fide nonprofit religious organization.

In her NOIR dated June 23, 2003, the director again requested information regarding the petitioner's tax-exempt status. In response, the petitioner submitted a copy of an April 28, 1998 letter from the IRS informing the petitioner that the June 1996 letter granting the organization tax-exempt status was still in effect.

The evidence sufficiently establishes that the petitioner is a bona fide nonprofit religious organization, exempt from taxation as required by the statute and regulation.

The second issue to be discussed is whether the petitioner established that the beneficiary had been continuously engaged in a religious occupation for two full years preceding the filing of the visa petition.

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)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an 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 September 26, 1997. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In its letter of August 17, 1997, the petitioner stated:

[The beneficiary] arrived in the US from his position as a Minister of the Gospel in the Igreja Evangelica Assembleia de Deus in Ponta Grossa, Parana, Brazil, where he served from the date of his ordination, in 1979 until 1984. After that date, he arrived in the US, and began work as a volunteer with our church . . . [he] has been serving as full-time minister [with the petitioning organization], and as a volunteer after his entry into the US.

The petitioner submitted a copy of the beneficiary's curriculum vitae but submitted no documentary evidence to substantiate the beneficiary's work experience during the qualifying two-year period. 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 response to the director's RFE, the petitioner stated that the beneficiary "has been ministering in Lowell Assembly of God Church since September 18, 1994." According to the petitioner, the beneficiary performed the following duties: preparing and delivering sermons and other talks; interpreting doctrine and instructing new believers; conducting wedding and funeral ceremonies and communion; spiritual counseling; overseeing religious education programs; and engaging in interfaith, community, civic, educational and recreational activities.

As evidence of the beneficiary's performance of these duties, the petitioner submitted a copy of a document reflecting that the beneficiary was associated with the church in Lowell. The petitioner does not explain the nature of the document, which contains the notation "Agenda No. 01-98." The document appears to relate to activities occurring in 1998, and as such, is after the filing date of the petition and would not be probative evidence, even if it was properly identified.

The petitioner also submitted photographs that it indicated are of the beneficiary "pastoring," teaching, performing on the radio, officiating at wedding ceremonies, and administering communion. These photographs, without more, are of little evidentiary value as they are without sufficient authentication as to the dates and occasions that they were taken. The petitioner also submitted copies of "special licenses" issued by the state of New Hampshire authorizing the beneficiary to perform marriage ceremonies for two individuals. The petitioner did not explain in its response why the beneficiary needed these special licenses in order to perform his duties as a minister, or whether only a minister working in New Hampshire is required to or may obtain such licenses.

The petitioner additionally submitted copies of the beneficiary's Form 1040, U.S. Individual Income Tax Return, for the years 1996 and 1997 that he filed jointly with his wife. We note that there is no evidence that these documents were ever filed with the IRS, and both forms are dated February 10, 1998. Additionally, the beneficiary reports self-employment income from his position as a minister, however, the petitioner submitted no evidence that it had compensated the beneficiary, and indicated that his position with the church was that of a "volunteer." Further, the petitioner submitted a 1998 statement from the beneficiary's wife, who stated that she worked to support the family, earning \$400 per week, supplemented by the additional income of about \$200 weekly that her husband received from "offerings" in his "voluntary ministerial work."

The petitioner submitted a copy of an October 31, 1993 certificate of ordination that it granted to the beneficiary, a copy of a December 30, 1994 certificate indicating the beneficiary had completed the sixth academic year of the secondary course in theology; a copy of a September 4, 1995 diploma indicating that the beneficiary had completed the "fourth year of regular attendance in the Theological Course offered by the Bible School of Ministry," a copy of a 1998 certificate of ordination from the General Council of the Assemblies of God Church, and documentation indicating that the beneficiary had completed several one-week religious courses.

In her decision, the director referenced a letter from [REDACTED] stating that the General Council of the Assemblies of God Church would not "knowledgeably credential those who are in the country illegally, or who are here as students, or who are here seeking to apply for legal status wither through a green card or R-1 worker's visa." Nonetheless, the record contains a copy of a 1998 certificate of ordination from the General Council of the Assemblies of God Church, ordaining the beneficiary as a minister within that organization.

According to the beneficiary, he was ordained as a minister within the Portuguese District Council and the petitioning organization in 1993, and that the Portuguese District Council did not become associated with the general Council of the Assemblies of God Church until 1998. The beneficiary further stated that upon formation of that association, the General Council of the Assemblies of God Church also ordained him a minister. The petitioner, however, submits no corroborative evidence to substantiate the beneficiary's statement. 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 its response to the director's NOIR, the petitioner stated:

[The beneficiary] was trained for 5 years (1979 to 1984) while working as a Youth Pastor at a church in Brazil. Then, he was made a Deacon of the Assembleia De Deus church in Brazil. He remained a Deacon for six years and then became and Presbyterian/Evangelist. He worked in that capacity for two year[s] and was ordained a Minister in October 1993. His training included work and study under the Pastors at the churches where he trained until he was given his own church to Pastor in 1993. Since that time, he has continued with Bible Study and has grown a large church. He has included with his Affidavit his certificates and credentials showing the various stages in the move toward full Pastor.

Certainly, from September 1994 until the present, [the beneficiary] has been a full time Pastor fulfilling all aspects of his ministry. Further, he was fully supported by the [petitioner].

We note that the petitioner does not state that it paid the beneficiary a salary for his services, only that the petitioner "fully supported" him. The petitioner also did not specify the nature of the support that it provided to the beneficiary. We further note that this statement contradicts the statement of the beneficiary's wife, who stated that she provided financial support for the family, supplemented by the small compensation that the beneficiary received for his voluntary ministerial work.

In her NOIR, the director instructed the petitioner to:

Submit a detailed description of the beneficiary's prior work experience including duties, hours, and compensations, (especially compensations) accompanied by appropriate evidence (such as original pay stubs or cancelled checks, earning statements, W-2's or other evidence as appropriate).

The petitioner submitted copies of what counsel refers to as pay receipts for several months in 1995, including for the months of September through December. The petitioner submitted no similar documentation for the year 1996 or 1997 in response to the NOIR. Counsel stated in her cover letter accompanying the response to the NOIR that "[b]ecause of the prior ways the Church paid and kept records, we cannot find pay receipts from other years." The petitioner did not request additional time in which to find the missing records. The petitioner submitted copies of its 1996 and 1997 financial statements with the amount of its pastors' salaries highlighted; however, the documents do not reflect payments made specifically to the beneficiary.

Additionally, as previously noted, the petitioner stated that the beneficiary worked in a voluntary capacity. The petitioner provided no evidence to explain that since the beneficiary worked as volunteer, his compensation would be included in the "pastors' salaries" category in the petitioner's financial reports.

The petitioner additionally submitted copies of special licenses authorizing the beneficiary to perform marriage ceremonies in the state of New Hampshire. These marriage ceremonies, however, were performed after the petition was filed and therefore do not go to establish the beneficiary's qualifying experience. The beneficiary stated that while he is authorized to perform wedding ceremonies in Massachusetts, the state of New Hampshire requires the issuance of a special license in order for him to perform weddings in that state. The petitioner also submitted photographs that it stated depict the beneficiary performing his job as a minister and copies of church publications that identify the beneficiary as pastor of the Lowell church. However, as discussed previously, the photographs are undated and therefore of limited evidentiary value. Further, the church publications all postdate the filing of the petition.

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 documentation reflecting money paid to the beneficiary throughout 1995, 1996 and 1997. The petitioner submits pay receipts reflecting that it gave the beneficiary, his wife or both, at least \$500 per week during the qualifying two-year period. Although many of the documents do not indicate their purpose, several of the copies of canceled checks reflect that in 1995, the beneficiary received "salario," usually in the amount of \$750. The canceled checks for 1996 also reflect that the beneficiary received "salario" in the amount of \$500 in June. The copies of the canceled checks also reflect payments to the beneficiary's spouse for "men sal" of \$500 in November, and to the beneficiary or his spouse in the same amount and for the same purpose in December.

The record therefore reflects that the beneficiary apparently received some payments from the petitioner during at least part of the qualifying two-year period; however, the petitioner stated that it did not employ the beneficiary in a salaried capacity. Further, insofar as the documents show that during the qualifying two-year period, the beneficiary (or his wife, who, according to the canceled checks, received at least eight payments made specifically to her) received payments from the petitioner in amounts ranging from \$500 to \$1,250, the

documentation conflicts with the statement of the beneficiary's wife who stated that she supported the family with her earnings of \$400 per week, supplemented by the beneficiary's weekly income of about \$200 that he received from his "voluntary ministerial work."

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Further, if CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Additionally, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In her NOIR, the director instructed the petitioner to:

Submit a detailed description of the beneficiary's prior work experience including duties, hours and compensations, (especially compensations) accompanied by appropriate evidence (such as original pay stubs or cancelled checks, earning statements, W-2's or other evidence as appropriate). Submit an IRS certified copy of the income tax returns with all pertaining W-2s for the two years preceding the filing of this petition.

In response, the petitioner submitted copies of canceled checks made payable to the beneficiary during 1995, and indicated that the financial documentation for 1996 and 1997 were in storage and could not be found. As noted previously, the petitioner did not request additional time in which to find the missing records.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The petitioner submitted no other documentary evidence to establish that the beneficiary worked full time as a minister within its organization during the qualifying period. See *Matter of Soffici*, 22 I&N Dec. at 165. Additionally, because of the conflicting evidence regarding whether the beneficiary received compensation from the petitioner and, if so, the amount, the evidence submitted does not credibly establish that the beneficiary was continuously employed in the religious occupation for two full years preceding the filing of the visa petition.

The third issue to be discussed is whether the petitioner established that the proffered position qualifies as that of a religious worker.

The proffered position is that of a minister. The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n 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.

According to the petitioner, the position requires the beneficiary to, among other duties, "attend" all regular services, conduct baptism, funeral and wedding services, administer to the needs of the congregation, lead Sunday school and church youth groups, and minister "systematic Bible studies." The petitioner stated that this is a full-time position within the church with an expected remuneration of \$28,800 per year.

The evidence is sufficient to establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

The final issue is whether petitioner 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.

The petitioner submitted copies of its monthly checking statements and copies of unaudited financial statements for 2000 and 2001.

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.

Although the petitioner submitted copies of canceled checks reflecting that it paid the beneficiary and his wife from \$150 to \$1,000 per week during 1997, this evidence conflicts with the statement of the beneficiary's wife, who states that she supported the family on her earnings of \$400 per week supplemented by contributions made to her husband for his "voluntary ministerial work." The petitioner submitted no evidence to resolve this inconsistency in the record. *See Matter of Ho*, 19 I&N Dec. at 591-92. Additionally, as the petitioner, in its response to the director's request in the NOIR, failed to submit evidence of its ability to pay

the proffered wage as of the date the petition was filed, the AAO need not consider the sufficiency of this evidence on appeal. *Matter of Soriano*, 19 I&N Dec. 764 *Matter of Obaigbena*, 19 I&N Dec. 533 .

The evidence before the director failed to establish that the petitioner had the continuing ability to pay the beneficiary the proffered wage.

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.