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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: NOV 15 2005
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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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. On a subsequent appeal to the Administrative Appeals Office (AAO), the petition was remanded to the service center for issuance of a new decision. On remand, the director again denied the immigrant visa petition and certified his decision to the AAO. The director's decision will be affirmed.

The petitioner 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 perform services as its "Special Ministry Assistant to the US Director." The director determined that the petitioner had not established that the position qualifies as that of a religious worker, that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition, or that it had extended a qualifying job offer to the beneficiary.

On certification, counsel submits a brief and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(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 certification is whether the petitioner established that the position qualifies as that of a religious worker.

According to the regulation at 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 as a religious worker.

In a letter of July 30, 2002¹, [REDACTED] the petitioner's international vice president, stated that in the proffered position:

[The beneficiary] will assist the US director in implementing all aspects of [the petitioner's] mission, vision, values, and strategic directions. She will also develop a network to provide personal and spiritual support for [the petitioner's U.S.] staff.

Leader development for [the petitioner's] staff is a strongly religious function. [The beneficiary] will serve the staff as a Minister at Large, as well as a mentor to several key leaders. She will also design and teach Leader Development and Staff Training Materials.

Mr. [REDACTED] stated that the beneficiary would be paid an annual salary of \$60,000, plus health insurance, travel allowance and ministry expenses, for a compensation package of \$99,200 per year.

The job description identifies the following "functions:"

1. To participate as a full member of the National Leadership Team . . .
2. To develop a network of relationships in the U.S. that will serve as a basis for providing relational support and personal funding over the coming years . . .
3. To mentor [REDACTED] in her life and ministry . . .
4. To serve the staff of the collegiate ministry as a minister at large and as a mentor to selected staff . . .
5. To participate in the Leader Development Process as a leader at large and as a mentor to specific leaders . . .
6. To assist Dennis Stokes in the staff training process . . .
7. To colobar [sic] with [REDACTED] in the metro ministry as a leader and mentor to staff . . .
8. To serve as a counselor to the U.S. Director.

In its decision of April 20, 2004, the AAO noted that the Internal Revenue Service (IRS) had recognized the petitioner as a religious order but found that the petitioner had not established that the beneficiary would be engaged in a religious vocation. The AAO also found that the record did not establish how a religious occupation fit within the petitioner's religious order and that the position description did not establish that the duties of the proffered position related to a traditional religious function. The AAO remanded the petition in order for these issues to be addressed.

In response to the director's subsequent Notice of Intent to Deny (NOID) dated June 3, 2004, counsel stated that the beneficiary had completed the petitioner's internship program and had been "admitted" to the petitioner's religious order as a "navigator representative." The petitioner submitted a copy of a document entitled "Qualifications of a Navigator Representative" and a copy of another document entitled "Appointment and

¹ The first page of the petitioner's letter is dated July 29, 2002; however, the remaining pages are dated July 31, 2002.

Termination of Navigator Staff.” The documents do not indicate that a candidate for navigator representative must undergo an internship program as stated by counsel. However, the documents indicate that the petitioner considers the navigator representative as a staff member in its religious order. Another document entitled “Universal Code of Conduct” refers to both staff members and volunteers, as does the July 1, 2004 “conduct policy draft.”

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 evidence sufficiently establishes that the position is defined and recognized by the petitioning organization, that the position is traditionally a permanent, full-time compensated position within the organization, and is sufficient to establish that the position qualifies as a religious worker within the meaning of the statute and regulation.

The second issue on certification is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa 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 19, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a "Special Ministry Assistant" throughout the two-year period immediately preceding that date.

In its July 29, 2002 letter accompanying the petition, the petitioner stated that the beneficiary was "currently" serving as a regional team member and leader developer for the petitioner's staff throughout Africa.

She functions as the principal Leader Developer and Resource Person for our Ministry to Women in all of the Navigator work on that diverse continent. Training is crucial to the success of the ministry. As Leader Developer, her responsibilities include spiritual direction and personal coaching and mentoring.

In an attachment, the petitioner described the beneficiary's job duties to include bible studies, meeting with the "Kenya Country Leader and resourc[ing] with him in the leading of the Kenya Navigator ministry and help[ing] him in his Personal Development," meeting with "key leaders in the Kenya Navigator Ministry and resourc[ing] with/mentor them in their Personal Development and in the fulfillment of their assignments," attending and giving seminars and conferences, and "ministry" to family members. The petitioner stated that the beneficiary spends one to two hours per day in "Prayer for the ministry etc and in bible reading." However, the evidence is unclear as to whether this time is personal time or time directly related to the beneficiary's work for the petitioning organization. The petitioner stated that the beneficiary was engaged four to six hours per day in processing correspondence, bible studies and working on papers when she was not traveling. Other duties outlined by the petitioner occur on less than a daily basis, thus indicating that the beneficiary's normal workweek is 20 to 30 hours per week (assuming a five-day workweek). The petitioner did not specify the terms of the beneficiary's employment with the petitioning organization and submitted no corroborative evidence of the beneficiary's work during the 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)). Consistent with the requirements of the U.S. Department of Labor's Bureau of Labor Statistics and other regulations pertaining to employment based visa petitions, CIS holds that employment of less than 35 hours per week is not full time employment. Part-time employment is not a qualifying experience for the purpose of this employment based visa petition.

In response to the director's NOID, the petitioner submitted a copy of an August 6, 2004 letter from Mr. [REDACTED], who "certified" that the beneficiary was a salaried employee of the petitioning organization in Kenya, and from September 2000 to August 2002, earned an average annual salary of \$9,846 in U.S. dollars. In a copy of a letter dated August 6, 2004, the petitioner's national director in Kenya, [REDACTED], echoes Mr. [REDACTED] statements. The petitioner, however, submitted no corroborative documentary evidence of the beneficiary's work or compensation. *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.

On certification, the petitioner resubmits the letters from Mr. [REDACTED] and Mr. [REDACTED] but submits no other evidence such as canceled checks, pay vouchers, or verified work schedules that corroborates the beneficiary's employment with the petitioning organization. *Matter of Soffici*, 22 I&N Dec. at 165.

The director determined that the duties performed by the beneficiary during the qualifying period are not the same as the proffered position. The petitioner has failed to provide evidence of any work performed by the beneficiary during the qualifying period; however, we find that the duties allegedly performed by the beneficiary during the qualifying period are similar to the duties of the proffered position. We withdraw this statement by the director.

Counsel asserts that CIS "must accept Petitioner's bona fide representations regarding the religious character and mission of Petitioner and of the offered position, as well as Petitioner's assessment of Beneficiary's religious qualifications for the position." Nonetheless, the petitioner must establish that the beneficiary is qualified for the visa preference classification. While the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

As the petitioner submitted no corroborating evidence of the beneficiary's employment, the evidence is insufficient to establish that the beneficiary was continuously engaged in a qualifying religious vocation or

occupation for two full years immediately preceding the filing of the petition. 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 third 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 the record did not contain evidence of a job offer. Although the petitioner did not include a specific document labeled as a job offer, in its letter of July 29, 2002, the petitioner describes the proffered job and states that it will pay the beneficiary a compensation package of \$99,200 per year. The evidence sufficiently establishes that the petitioner extended a qualifying job offer to the beneficiary. We withdraw this determination by the director. However, as the petitioner has not established that the beneficiary was continuously employed in the religious occupation for two full years immediately preceding the filing of the visa petition, the petition may not be approved.

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. Accordingly, the decision of the director will be affirmed and the petition will be denied.

ORDER: The director's decision of March 22, 2005 is affirmed. The petition is denied.