U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 0 9 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:

[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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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), in order to perform services as a minister at a church in Attleboro, Massachusetts. The petitioner states that it will provide the beneficiary with a weekly salary of $300, as well as housing and utilities.

The director denied the petition in a decision dated May 30, 2002. The director determined that the petitioner had not established that the proposed position qualifies as a religious occupation, and that the beneficiary had been continuously engaged in a religious occupation for two years immediately preceding the filing date of the petition. The director further determined that the petitioner had not established its ability to pay the beneficiary the proffered wage.

On appeal, counsel for the petitioner submits a brief and additional documentation. Counsel asserts that the duties of the proposed position require advanced religious training and that the petitioner previously provided a letter offering the beneficiary a wage. In support of the appeal, counsel provides a document listing the qualifications, rights, and authorities of ordained ministers as set forth by the petitioner, and an audit statement concerning a previously submitted balance sheet.

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

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,
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> (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
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> (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) states, in pertinent part:

> Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petitioner's authorizing official is whose title is noted as "Bishop Administrative." Upon the initial submission of the petition, the petitioner submitted a letter from Rev. Edwards, dated March 1, 2001, indicating that the petitioner is affiliated with the international headquarters of the in Cleveland, Tennessee. The petitioner is one of eight Hispanic regional headquarters of the in the United States. The record reflects that the petitioner's name, in Spanish, is "Iglesia de Counsel for the petitioner states that the church in Attleboror has a congregation of 80 members. There is no information contained in the record as to how many churches are within the petitioner's region, the number of the petitioner's salaried employees, or the number of employees of the church where the beneficiary is to perform services.

The record reflects that the beneficiary is a native and citizen of the Dominican Republic who was last admitted to the United States as a nonimmigrant visitor on September 29, 1995, with authorization to remain until March 28, 1996. In an addendum to Part 4 of the Form I-360, Petition for Amerasian, Widow or Special Immigrant, the beneficiary provides the following statement:

> I have worked as a pastor, first fo in Florida, through whom I submitted [a Form I-360 in] 1996; I was issued employment authorization through this application. I have since continued to work as a pastor in Philadelphia [Pennsylvania] and Attleboro [Massachusetts], though I have not renewed the work permit.

The first issue raised by the director to be discussed in this proceeding is whether the proposed position qualifies as a religious occupation.

The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

> *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.

The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an "activity which relates to a traditional religious function." Citizenship and Immigration Services (CIS) interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs 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 job title alone is not, and cannot be, the determining factor in whether a position qualifies as a religious occupation. CIS must consider each petition on its individual merits.

s states that the beneficiary has been an evangelist and full-time pastor of the church in Attleboro since November 2000, and that he was pastor of a in Frederick, Maryland, from November 1999 to November 2000. further states that the beneficiary had previously served as pastor of a h in Philadelphia, Pennsylvania, from 1997 to 1998, and as pastor of Ministries in Miami, Florida, from 1994 to 1996. Finally, outlines the beneficiary's pastoral duties, and time spent weekly performing those duties, as follows: visitation and Bible studies (48 hours); Bible study class (2 hours); ministering church services (10 hours); and, coordinating Bible institute (3 hours).

In response to the director's request for additional information and evidence concerning the proposed position and the beneficiary's work history, the petitioner submitted a document entitled "Instructions to Ministerial Applicants," listing the ranks of ministry in the and the steps required in the licensing process for each rank. The document indicates that the recognizes the following ranks of ministry: exhorter, licensed minister, and ordained minister.

The director determined that the petitioner had not established that the "past and proposed duties of the position" qualify as a religious occupation, and had not established that the beneficiary "has been or will be employed" in a religious occupation.

On appeal, counsel reiterates that the beneficiary is an ordained minister of the Counsel states that the beneficiary, in fact, "ministers church services, coordinates religious studies, and performs all church activities and visitation duties." as outlined in the "Instructions to Ministerial Applicant's" document. In support of the appeal, counsel submits a document from the petitioner's "Minutes of the 68th General Assembly." That document indicates that th does "not license or ordain applicants for the ministry unless they pay tithes.

A review of the record reveals discrepancies pertaining to the duties of the proposed position. In its June 7, 2002 letter, the petitioner stated that the beneficiary "performs religious services" and "teaches and preaches the gospel." In its January 20, 2003 letter, the petitioner stated that the beneficiary both performs religious services and *assists in* performing religious services. The petitioner further stated in its January 20, 2003 letter that the beneficiary *assists in* officiating at funerals and *assists in* teaching and preaching the gospel.

These discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent

competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Many of the duties of this particular position appear to be activities that are normally performed by lay preachers, or activities that would normally be performed by a caring and active member of the congregation. For example, lay preachers lead congregations in worship, preach and read the Bible at services, teach Bible study, visit the sick and elderly, and provide spiritual counseling to members of the congregation. However, the regulations specifically preclude lay ministers from classification as special immigrant religious workers.

Based on a review of the record, it is concluded that the petitioner has not submitted sufficient evidence to overcome the director's concerns on this issue. The record fails to establish that the proposed position is traditionally a permanent, full-time, salaried occupation within the petitioner's denomination. For this reason, the petition must be denied.

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

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986). As the petition was filed on April 9, 2001, the petitioner must establish that the beneficiary was continuously and solely engaged as a minister of the petitioner's religious denomination for the two-year period beginning on April 9, 1999.

In addressing this requirement, the petitioner submitted the following documentation:

- A letter from [redacted] of the Salvation Army in Philadelphia, Pennsylvania, stating that the beneficiary was pastor of that organization's Northeast Hispanic Corps from November 1999, through August 2000;
- A photocopy of a 2000 Internal Revenue Service (IRS) Form W-2, Wage an Tax Statement, from the Salvation Army indicating that the beneficiary received $15,846.52 in wages;
- Photocopies of cancelled checks and receipts showing payments from the petitioner to the beneficiary, dated February 2001, through January 2002;
- An illegible photocopy of the beneficiary's 1999 IRS Form 1040A, U.S. Individual Income Tax Return;
- A photocopy of the beneficiary's amended 1999 IRS Form 1040; and,
- A photocopy of the beneficiary's 2000 IRS Form 1040.

The record reflects that the beneficiary received remuneration from the petitioner for services performed from February 2001 through January 2002. Prior to that, the beneficiary was employed by the Salvation Army as a pastor from November 1999 through August 2000. There is no evidence contained in the record to establish

who was the beneficiary's employer from April 9, 1999 through November 1999, and from January 2, 2002 through April 9, 2002. The applicant's 1999 IRS Form 1040A is illegible, and the amended IRS Form 1040 merely notes that the beneficiary is "reporting self-employment income not reported in the original."

Furthermore, although counsel asserts in a letter dated March 12, 2002, that the Salvation Army is "a the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There is no evidence contained in the record to show that the Salvation Army is affiliated with the petitioner's Church of God denomination.

It is concluded that the petitioner has failed to establish that the beneficiary had been continuously and solely engaged as a minister of the petitioner's religious denomination throughout the requisite two-year time period. For this reason as well, the petition must be denied.

The third issue raised by the director to be addressed in this proceeding is whether the petitioner has established its ability to pay the beneficiary the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

> *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 un-audited financial statements for the years ending August 31, 1999, 2000, and 2001. The director concluded that limited reliance could be placed on the un-audited reports, as they were based on representations of management and did not fairly present the petitioner's financial position.

On appeal, counsel submits a letter indicating that the previously submitted 2001 financial report had been audited on July 16, 2002. It is noted, however, that the 2001 financial report indicates that the petitioner had a negative balance of revenue over expenses totaling $4,560 for that year. Therefore, it is concluded that the petitioner has not established its ability to pay the beneficiary the proffered wage as of the date the petition was filed. For this additional reason, the petition must be denied.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that: (1) it qualifies as a bona fide non-profit religious organization; (2) the beneficiary is qualified to engage in a religious vocation or occupation; and, (3) it has extended a qualifying job offer to the beneficiary. Since the appeal will be dismissed for the reasons discussed, these issues need not be examined further.

In reviewing an immigrant visa petition, CIS must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the beneficiary in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.