U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 1 5 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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, 8 U.S.C. § 1153(b)(4), to perform services as a praise and worship leader. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a praise and worship leader immediately preceding the filing date of the petition; (2) that it had made a qualifying job offer to the beneficiary; (3) its ability to pay the beneficiary's proffered wage; or (4) that the beneficiary had entered the United States in order to perform qualifying religious work.

On appeal, the petitioner submits a letter from its pastor and arguments from counsel.

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 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).

We shall first address the issue of whether the petitioner has extended a *bona fide* offer of employment in a qualifying religious occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines a "religious occupation" as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) 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. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services 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.

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within 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).

Pastor Z.O. Oloba, assembly pastor of the petitioning church, states:

> [The beneficiary] has been a member of our church since 1998. And, is at present the Praise and Worship leader in the church.
>
> She was offered this position based on her activities, performance and a need for praise and worship leader. She is presently a student at [redacted] in pursuant of relevant course [sic] for effective discharge of this duty and church organization.
>
> Her duties include leading of praise worship during services, coordination of the church worship team and organizing the team performance outside the church during functions. She also teaches in the Sunday school department and or children ministry [sic].

The director requested further details about the nature of the beneficiary's work. In response, [redacted] states that the beneficiary has completed a year of "in-house training," and that her "duties include teaching, leading the choir, organizing crusade[s] and Christian concerts within the country and worldwide (when necessary). She also assists with the planning of mission trips as well as assisting the pastoral council with daily management of the church." [redacted] states that the beneficiary "has not been receiving salary from the church," and that "[a]t this time the church has one salaried employee and a total of three (3) non-salaried employees." [redacted] is the salaried employee. One non-salaried employee receives "Room and Board," with the remaining two individuals (including the beneficiary) receiving "No compensation."

The director denied the petition, concluding, "[i]t cannot be determined that this is a permanent job offer. The evidence does not show that this is a paid position." On appeal, [redacted] states "[t]he position of Praise and Worship Leader is a full time and permanent position with a minimum of forty (40) hours of work per week. . . . [The beneficiary] has not been receiving salary from the church, however a monthly stipend of three hundred dollars ($300) for her upkeep is channeled through an elder in the church." The petitioner had previously made no claims about this stipend, and the record contains no corroborating evidence.

The petitioner asserts that the beneficiary's position is a full-time, paid, permanent position, but the record contains no evidence that the denomination regards this position as being, traditionally, an occupation rather

than an occasional duty assigned to a volunteer from the congregation. The record likewise fails to show that the petitioner has ever utilized the full-time paid services of a worker in the same position that the beneficiary now occupies with little or no compensation.

The next issue concerns the beneficiary's past experience. The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on April 1, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a praise and worship leader throughout the two years immediately prior to that date.

As noted above, the petitioner has asserted that the beneficiary has worked for the petitioner since 1998, without pay, and that the beneficiary is studying at The director's request for additional details yielded no significant new information.

In denying the petition, the director noted that the beneficiary has been an F-1 nonimmigrant student since 1999. The director observed that, if the beneficiary's principal activity is college study rather than religious work, then the beneficiary cannot be said to have worked *continuously* for the petitioner. The term "continuously" 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).

On appeal, the petitioner states that the position is full time, but offers no evidence to show that the beneficiary has, in fact, worked continuously for the petitioner throughout the 2000-2002 qualifying period, rather than working intermittently for the petitioner while continuing the studies that, according to the terms of her nonimmigrant visa, are the primary justification for her presence in the United States. The record contains nothing from Beulah Heights Bible College to establish the extent, duration, or purpose of her studies there.

The next issue concerns the petitioner's ability to pay the beneficiary's proffered salary of $1,200 per month ($14,400 per year). 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's initial submission includes copies of four bank statements, from two different accounts, showing the following average balances:

September 2001, checking $4,922.73

June 2002, checking	3,499.62
July 2002, savings	10,665.05
August 2002, checking	6,209.13

Subsequently, the petitioner has submitted a letter from the bank, indicating that the checking account has, since 2000, had an average balance of $3,122.92. The petitioner also submits copies of three further bank statements, each showing an "Average Ledger Balance" as follows:

February 2003, checking	$1,870.81
March 2003, checking	994.78
April 2003, checking	854.62

Bank statements, by themselves, do not present a complete picture of the petitioner's assets and liabilities. Beyond that, the above statements facially appear to indicate that the beneficiary's assets are dwindling. The statements do not show a consistent infusion of surplus income sufficient to pay the beneficiary $1,200 per month.

The director, in denying the petition, stated that the petitioner submitted insufficient evidence to establish its ability to pay the beneficiary's proffered wage. On appeal, neither the petitioner nor counsel contests or even acknowledges this finding by the director.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, *audited* financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The minimal documentation provided by the petitioner does not readily establish the petitioner's ability to pay the beneficiary $14,400 per year.

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, the director concluded, the beneficiary did not enter the United States for the purpose of working as a religious worker. The beneficiary's passport shows that she entered the United States under a B-1 nonimmigrant visa in order to attend the 13th Baptist Youth World Conference.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks* to enter," which describes the entry as a future act. We therefore withdraw this particular finding by the director.

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.