**U.S. Department of Homeland Security**
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Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 1 9 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 seeks classification 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 pastor. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition; (2) its ability to pay the beneficiary's proffered salary of $12,000 per year; or (3) that it possessed the required tax-exempt status as a religious organization.

On appeal, the petitioner submits a brief from counsel, as well as several documents, most of them previously submitted.

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;
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> (ii) seeks to enter the United States--
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> > (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 Code of 1986) at the request of the organization in a religious vocation or occupation; and
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> (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) 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 10, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

In a cover letter submitted with the petition, Harrison Walang, church treasurer, refers to "Good News Assembly (Joshua Jama Ministries Inc.)," thereby indicating that the petitioner is either identical to, or a subsidiary of, a corporation established by the beneficiary. In a later submission, Mr. Walang specifies that

"one of the visions of Ministries is to set up churches named Good News Assembly nationally and internationally." tates that the beneficiary "and his family founded the church during an evangelistic crusade carried out in 1999." The articles of incorporation of JJM were filed on October 12, 1999.

The initial submission contained no documentary evidence about the beneficiary's past work, except for a copy of his 1995 certificate of ordination. Therefore, the director instructed the petitioner to "[s]ubmit a detailed description of the beneficiary's prior work experience . . . accompanied by appropriate evidence (such as cop[ies] of pay stubs or checks, W-2's or other evidence as appropriate)."

In response, the petitioner has submitted a letter from of Faith Outreach Center, dba Harvest Family Church, who states "we allowed [the beneficiary] to pioneer a church in Houston and to register and incorporate it under his already [sic] traveling ministry name." Documents in the record name as a "director" of JJM, but there is no clear evidence of any formal link between Faith Outreach Center and JJM or the petitioning church. We note that the beneficiary initially entered the United States pursuant to an R-1 nonimmigrant religious worker visa, which bears the annotation "Faith Outreach Center." The record, however, contains no evidence that Faith Outreach Center or Harvest Family Church ever made any salary payments to the beneficiary, or that the beneficiary ever worked for that church. Harrison Walang states that Rev. Lanza and the beneficiary "maintain ministry relationships by preaching occasionally in each others churches" and that the beneficiary established the petitioning church "under the close supervision of Pastor Tom Lanza."

The petitioner has submitted tax documents, indicating that the beneficiary earned considerably less than his proffered salary. We shall discuss these documents in greater detail elsewhere in this decision. The petitioner has argued that the beneficiary accepted reduced compensation because his spouse's income was sufficient to support the family.

The director denied the petition, observing that the beneficiary has earned considerably less than the proffered wage of $12,000 per year, and that there is no documentary evidence to show that the beneficiary has continuously worked as a pastor for the petitioning church during the qualifying period.

On appeal, counsel argues that the petitioner has "established that the beneficiary . . . has been carrying on [his] vocation for well over two years." The record, however, offers very little detail about the beneficiary's actual work. The record shows that he established the church, and has received some money therefrom, but this evidence does not establish the beneficiary's continuous, full-time activity as pastor of the church. As founder of the petitioning entity, the beneficiary has obviously been involved in the church's operation, but involvement is not synonymous with continuous activity.

The next issue concerns the petitioner's ability to pay the beneficiary's proffered salary of $12,000 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.

A letter from a branch of Bank Of America indicates that the petitioner holds an account there, and that "in the past months, the account average balance has been in the low four figures." This information is far too imprecise to allow a favorable determination. Furthermore, an amount "in the low four figures," i.e., less than $5,000, does not establish sufficient income to pay the beneficiary's $12,000 salary. Assuming that the account carries a monthly balance of $5,000, which remains stable before factoring in the beneficiary's salary, the account would be depleted after five months of salary payments to the beneficiary.

The director requested additional information, at which time the petitioner submitted "Income and Expenditure" statements for JJM for October-December 1999 and calendar years 2000 and 2001. The 1999 statement indicates that expenditures consumed all of JJM's income, with no salaries paid. The 2000 statement indicates that JJM paid the unidentified "pastor" $5,000, and that JJM's total income exceeded its expenditures by $2,350.04. Thus, in 2000, JJM paid the pastor less than half of the proffered salary, and was several thousand dollars short of being able to pay the full $12,000. The 2001 statement once again shows expenditures equal to income, with the pastor's compensation totaling only $8,000. Regardless of whether these documents are acceptable under 8 C.F.R. § 204.5(g)(2), on their face they indicate that JJM has not ever been in a financial position to pay the beneficiary $12,000 per year.

The petitioner has also submitted copies of canceled checks written during 2000, showing checks totaling $5,855 issued to the beneficiary; $500 issued to the beneficiary's spouse, and $500 apparently cashed even though the line designating the payee is blank. The beneficiary reported $4,000 in income on his federal tax return for 2001. On a separate, joint declaration, the beneficiary and his spouse claimed $7,138 in adjusted gross income. For 2000, the beneficiary and his spouse, on a joint return, reported $51,200 in adjusted gross income. Forms W-2 indicate that the beneficiary's spouse's worked for Bayport Technology, Inc., earning $51,800 in 2000 and $15,950 in 2001.

Harrison Walang has asserted that the beneficiary did not receive his full salary in 2000 or 2001 because he was able to rely on his spouse's earnings. It remains that, according to the above figures, the petitioner did not have sufficient income to pay the full salary even if the beneficiary had been inclined to accept it. Indeed, Mr. Walang asserts that the beneficiary's compensation was reduced in 2001 "because there was a drop in membership and income." This stipulation supports, rather than rebuts, the director's finding that the petitioner has not been able to pay the beneficiary's full salary.

The director denied the petition based on the above information. On appeal, counsel reiterates Mr. Walang's assertions, and contends "the petitioner established its ability to pay the proffered wages" by submitting various financial documents. We reject this contention, because the petitioner's own incomplete financial documentation does not establish this ability, and [redacted] has admitted that the beneficiary received only a third of his intended compensation in 2001 because of the church's diminished income.

To establish ability to pay, it obviously cannot suffice for the petitioner simply to submit financial documents. Those documents must also establish that the petitioner has sufficient income or assets to pay the proffered wage. It is the *information* in the documents, rather than the documents themselves, that establish ability to pay, and the information submitted by the petitioner does not indicate that the petitioner, ever since the date of filing, has been consistently in a position to pay the beneficiary $12,000 per year. Newly-submitted documents on appeal reinforce the conclusion that, in 2000 and 2001, the petitioner's income, after expenses, was not sufficient to pay the beneficiary's proffered wage. The claim that the beneficiary did not *want* the full salary is immaterial to the question of whether the petitioner was *able* to pay.

The final issue concerns the petitioner's status as a qualifying religious organization. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

> (A) Documentation showing that it is exempt from taxation in accordance with section 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
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> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner submits a copy of an Internal Revenue Service (IRS) advance ruling letter dated August 23, 2001, regarding the status of JJM. This letter states, in pertinent part, "[b]ecause you are a newly created organization, we are not now making a final determination of your foundation status under section 509(a) of the Code. However, we have determined that you can reasonably expect to be a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi)" of the Code. The letter indicates that further information is needed for a final ruling, and that the advance ruling period ends December 31, 2003. There is no subsequent final determination letter in the record, but the appeal was filed before the close of the advance ruling period.

The director stated that only an organization classified as a church under section 170(b)(1)(A)(i) of the Code can qualify under the regulations. We find this interpretation to be overly strict. An organization that qualifies for tax exemption as a publicly-supported organization under section 170(b)(1)(A)(vi) of the Code can be either religious or non-religious. While this classification is not *automatically* disqualifying, the burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) of the Code derives primarily from its religious character, rather than from its status as a publicly-supported charitable and/or educational institution. The organization can establish this by submitting documentation which 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 documentation should also establish that the organization, when it obtained its tax exemption, represented itself to the Internal Revenue Service as a religious organization. *See* Memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003).

The director instructed the petitioner to submit a copy of IRS Form 1023, used to request recognition of tax-exempt status. In response, the petitioner submits a copy of a 1982 IRS letter, indicating that "Faith Outreach Center of Conroe Texas, Incorporated is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code." As noted above, there is no evidence of any formal affiliation between the petitioner and Faith Outreach Center, and there is no indication that Faith Outreach Center's exemption is a group exemption that applies to other entities.

The petitioner has also submitted a copy of JJM's Form 1023. Counsel states that an error, made while filling out the form, led to JJM's erroneous classification under section 170(b)(1)(A)(vi) instead of (i) of the Code. Counsel also claims that this error cannot be corrected before the advance ruling period ends on December 31, 2003.

When considering the credibility of counsel's explanation, we turn to the Form 1023 itself. The first mention of churches is at Part III, line 2a, which contains a box that the organization must check if it "is a church" or

association of churches. JJM did not check this box, but rather checked a box on line 3, which applies when "the organization does not meet any of the exceptions on line 2 above."

Line 9 of Part III offers several options, in the form of check boxes, for the classification of the organization. The first box, a, is for an organization that is "a church or a convention or association of churches." Such organizations "must complete Schedule A." JJM did not check this box. Instead, JJM checked box h, requesting classification under section 170(b)(1)(A)(vi) of the Code.

Part III, line 14, asks "[i]s the organization a church?" and, if the answer is "yes," again instructs the organization to submit schedule A. JJM checked the box marked "No."

Despite these three separate failures to identify the petitioner as a church – to the point of specifically indicating that JJM is *not* a church – an attachment submitted with Form 1023 states "Joshua Jama Ministries intend to function as a ministry (church). . . . We intend to establish vibrant Holy Ghost led churches." The attachment adds that JJM also intends to establish "Counseling Centers" and "Youth Centers."

The above information does not persuasively support counsel's claim that JJM meant to apply for recognition as a church, and provided erroneous information on the form. Rather, JJM appears to have been conceived as a larger organization that *includes* churches (as well as other entities). At the same time, the information on the attachment to the form indicates that JJM's purpose is pervasively and exclusively religious. Thus, JJM's classification under section 170(b)(1)(A)(vi) of the Code is not disqualifying. Furthermore, the petitioning church appears to be an outgrowth of JJM, rather than an entirely separate or independent entity that would require a separate determination of tax-exempt status. Based on the available information, we withdraw the director's finding regarding the petitioner's tax exemption, although the other grounds of denial still stand.

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.