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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 25 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

The petitioner is an "evangelical Christian organization." 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 youth outreach coordinator. The director determined that the petitioner had not established its status as a tax-exempt religious organization. The director also determined that the petitioner had not established that the beneficiary was qualified for the position within the organization.

On the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, counsel stated that a brief and or additional evidence would be submitted within 30 days. However, as of the date of this decision, more than 13 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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
> >
> > (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).

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 § 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, which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner initially submitted a copy of a letter dated July 10, 1997, in which the IRS made an advance ruling that the petitioner was exempt from taxation under section 501(c)(3) of the IRC as an organization under sections 509(a)(1) and 170(b)(1)(A)(vi). In response to the director's Notice of Intent to Deny, the petitioner submitted a copy of an April 25, 2001 letter from the IRS, in which the IRS granted the petitioner tax-exempt status as an organization under sections 509(a)(1) and 170(b)(1)(A)(vi).[1] The petitioner also submitted a copy of its articles of incorporation in the state of California, which specifies the purpose of the organization and contains the proper dissolution clause required by the IRS and the above-cited regulation.

On appeal, counsel states that the specific sections cited by the IRS in its April 25, 2001 letter "includes corporations organized for religious purposes." Counsel argues that the petitioner is a "corporation organized for the religious purpose of Christian outreach under the auspices of the Evangelical church." The language of the regulation is clear, nonetheless. Absent a letter from the IRS granting tax-exempt status specifically as a religious organization, the regulation requires the petitioner to submit "such documentation" as is required by the IRS to establish eligibility for tax exemption as it relates to religious organizations. The evidence submitted by the petitioner is not sufficient under the regulations, and does not establish its bona fides as a tax-exempt religious organization under section 501(c)(3).

The director also determined that the petitioner had not established that the beneficiary was qualified for the position with the petitioner because the petitioner failed to establish that the beneficiary qualified as a minister within the denomination.

The proffered position is that of a youth outreach coordinator. The duties as summarized by the director do not reference the duties outlined for the job by the petitioner, but rather those of the beneficiary's previous position as a Christian outreach coordinator. The petitioner does not allege that the beneficiary is a minister. We therefore

[1] We note that the IRS letter refers to modification of its May 1997 letter. However, this inconsistency does not appear relevant and does not affect our decision in this case.

withdraw the director's determination that the beneficiary does not qualify for the position of minister within the petitioning organization.

Beyond the decision of the director, the petitioner has not established that the beneficiary had been engaged continuously in the religious occupation for two full years 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 April 25, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

The petitioner submitted a statement from the Church of Grace in Cairo, Egypt, which states that the beneficiary was employed by the church from January 3, 1995 to January 20, 2001 at a monthly salary of five hundred Egyptian pounds. According to the Form I-360, Petition for Amerasian, Widow or Special Immigrant, the beneficiary entered the United States on January 25, 2001, under a B-2 (temporary visitor for pleasure) visa. The record does not establish the date that the beneficiary began to work for the petitioner.[2]

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

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[2] The record contains a 2001 Form W-2, Wage and Tax Statement, issued to the beneficiary by the petitioner and reporting $7,500 in wages paid. At the rate of $1,500 per month, the proffered salary, this would indicate that the beneficiary began working for the petitioner in August 2001. This corresponds roughly with the July 3, 2001 approval of the petitioner's Form 1-129, Petition for a Nonimmigrant Worker, filed on behalf of the beneficiary. The petitioner alleges that the beneficiary "since her arrival in the United States . . . has been volunteering her time at our organization." However the petitioner provides no further information regarding the beneficiary's association with it prior to approval of the R-1 visa.

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.

Although the letter from the Church of Grace in Egypt indicated that the beneficiary was compensated for her services with the church, the petitioner submitted no corroborative evidence such as checks, pay vouchers or receipts, to substantiate this statement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the petitioner provides no evidence of the beneficiary's employment from late January 21, 2001 to April 25, 2001.

The record does not establish that the beneficiary was continuously employed in the religious occupation for two full years preceding the date of the filing of the visa petition. This constitutes an additional ground for dismissal of the appeal.

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.