**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: TEXAS SERVICE CENTER Date: AUG 25 2004

IN RE: Petitioner:
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.

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a temple. 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 cantor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that the beneficiary possessed the required two years membership in the denomination. The director also determined that the petitioner had not established that the beneficiary was qualified for the religious worker position within the religious organization.

On appeal, 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 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) echoes the above statutory language, and 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 12, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a cantor throughout the two-year period immediately preceding that date.

The petitioner and the beneficiary entered into an agreement whereby she agreed to work for the petitioner for a period of two years beginning on March 1, 2002. The petitioner submitted a copy of the W-2, Wage and Tax Statement, that it issued to the beneficiary in 2002, reflecting payment for her services.

The petitioner also submitted a statement from [redacted] of NCI-Emanuel, who stated that the beneficiary was employed full time as a cantor in the synagogue from 2000 to November 2001. In a letter from September 2001, [redacted] does not mention the beneficiary's employment status, but states that she "has been serving in our community since 2000." The record also contains a statement dated November 8, 2001 from the Latin American Rabbinical Seminary Marshall Meyer, certifying that the beneficiary was currently in her second year of studies at the Beth Asaf Hazzanim and Singing Teachers school. A letter dated May 2001 stated that the beneficiary was "presently studying" at the National Music Conservatory "Carlos Lopez Buchardo."

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 appeal, counsel stated that the beneficiary was a part-time student while working full time at the NCI-Emanuel temple in Argentina, as shown by the transcripts submitted and the letter from the temple. It is not evident from the transcripts, however, that the beneficiary was a part-time student. Additionally, neither of letters or any other contemporaneous evidence in the record indicate that the beneficiary was a part-time student in addition to working full time as a cantor for the temple. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the beneficiary's studies at the Rabbinical Seminary "are also considered carrying on the vocation." In support, counsel cites a non-precedential AAO decision from 1994. Prior non-precedential AAO decisions have held that academic studies by an ordained minister does not interrupt the continuity of experience, and that an ordained minister can meet the statutory experience requirement even though he or she may have attended school full time during the immediate two years preceding the filing of the visa preference petition. However, the petitioner has not established that the beneficiary was a practicing member of the clergy within her denomination prior to attending school. Pursuing an undergraduate academic degree for the purpose of entering the religious occupation is training for the occupation and not experience in the occupation as required by the statute.

The evidence does not establish that the beneficiary was continuously employed as a cantor for two full years prior to the filing of the visa petition.

The director determined that the petitioner had not established that the beneficiary was qualified for the proffered religious position.

stated that the beneficiary served as cantor in the NCI-Emanuel temple in Argentina from 2000 to November 2001. Rabbi Dr. Simón Moguilevsky of the Congregacion Israelita de la Republica

Argentina praised the beneficiary's participation with that organization's cantor in the Babalot Shabat and the High Holydays performances.

On appeal, the petitioner submits additional attestations to the beneficiary's qualifications and performance as a cantor. the executive director of the Jewish Federation of Volusia & Flagler Counties, states that the beneficiary, in addition to serving as cantor with the petitioner, has served the federation's seven temples on all special occasions. Two other cantors, including the beneficiary's sister, who is also a cantor, attest to her qualifications as a cantor.

The petitioner submitted documentary evidence reflecting that the beneficiary has performed in the role of cantor since she was hired by the petitioner, and that she has recorded a CD as a cantor.

The record is sufficient to establish that the beneficiary is qualified for the position of cantor with the petitioner.

Beyond the decision of the director, the petitioner has not established that it has extended a valid job offer to the beneficiary. Although the petitioner states that it is offering the beneficiary a permanent job, the contract entered into by the petitioner and the beneficiary is only for a two-year period. This indicates that the beneficiary's services are required for only a specific period of time. While this time-specific requirement is sufficient for the purpose of obtaining an R-1, Alien in a Religious Occupation, non-immigrant visa, it is not sufficient for the purpose of granting a permanent immigrant visa for an employment-based visa petition. The petitioner has not established that it has extended an offer of a full-time, permanent position to the beneficiary. This deficiency 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.