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 2 5 2004

IN RE: Petitioner: [redacted]
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

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition was certified to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed. The petition will be denied.

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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a minister. 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. The director also determined that the petitioner had failed to establish that it had extended a valid job offer to the beneficiary.

The petitioner submitted no additional evidence or argument in support of the petition.

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,
> >
> > (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
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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) 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:
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> > (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 February 25, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

> [A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

According to the petitioner, the beneficiary has a degree in theology and has been an ordained minister since 1997. The petitioner submits no evidence to establish that the beneficiary was ordained in 1997. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner stated that the duties of the proffered position include evangelistic crusades, instruction and counseling. The petitioner did not identify duties that would include traditional religious rites such as performing marriage, baptism, or interment ceremonies. The record does not establish that the beneficiary will be a minister within the meaning of the regulation, or that he has a religious vocation. The director determined, and we concur, that the nature of the work to be performed by the beneficiary is a religious occupation as defined by the regulation.

The petitioner stated that the beneficiary began his employment with the petitioner upon his entry into the United States with an R-1 visa on February 17, 2001. Prior to that, according to the petitioner, the beneficiary worked for five years at a church in Brazil that shares the petitioner's faith and doctrine. The petitioner states that the beneficiary served as a deacon and evangelist at the church. Although it provides an address, the petitioner does not name the church and submits no corroborating evidence of the beneficiary's employment from the Brazilian church.

Additionally, the record contains no evidence of the work performed by the beneficiary for the petitioner following his entry into the United States. The petitioner submits a copy of a 1998 "certificate of separation" giving the beneficiary the "separation or occupation of presbytery." No evidence in the record indicates the nature of a presbytery within the petitioner's denomination, and it is unclear whether the term refers to a

minister or an elder within the church. The petitioner also submits a copy of a 1998 "certification of religious order minister," which appears to designate the beneficiary as an evangelist with the petitioner church. Both of these certificates were issued by the petitioner church in Atlanta prior to the beneficiary's entry into the United States in 2001 to work for the petitioner. The petitioner fails to explain how the beneficiary could be appointed to a position within the petitioner church without being associated with the church in Atlanta and while employed at another church in Brazil. 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. Further, 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).

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. Rpt. 101-723, at 75 (Sept. 19, 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).

The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, who are not employed *per se* in the conventional sense of salaried employment, but are fully financially supported and maintained by their religious institution and are answerable to that institution. Laypersons, on the other hand, are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. *See* 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, CIS interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must generally have been full-time salaried employment in order to qualify as well.

The petitioner submitted copies of Forms 1099-MISC issued to the beneficiary in 2001 and 2002 by the Assembléia De Deus Ministerio De Boston in the amounts of $22,960 and $24,960, respectively. These were the amounts reported by the beneficiary on his Form 1040, U.S. Individual Income Tax Return, for the same years. The 2002 Form 1040 is not signed by the beneficiary and does not indicate his occupation. The 2001 form indicates his ocupation as "religious worker."

As previously discussed, the petitioner provided no evidence of the nature of the work performed by the beneficiary during the qualifying two-year period in the United States, and no evidence of employment in the religious occupation in Brazil from February 2000 to February 2001. The evidence does not establish that the beneficiary has two years experience in the religious occupation for the two years immediately preceding the filing of the visa petition.

The director determined that the petitioner had not submitted evidence to substantiate that it had extended a valid job offer to the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner stated that the proffered position was a full-time position in which the beneficiary would work at least 40 hours per week. It indicated that the beneficiary entered the United States for the purpose of working for the petitioner church. The petitioner does not state the amount of compensation it proposes to pay the beneficiary.[1] As noted above, the petitioner appears to have compensated the beneficiary as an independent contractor in the amount of $22,960 in 2001 and $24,960 in 2002. The director found that, as the petitioner has not previously claimed the beneficiary as an employee, the evidence does not establish that the proffered position offers salaried employment. The fact that the beneficiary has been paid as an independent contractor while in R-1 visa status does not prove that the job offer is not valid.

Nevertheless, the petitioner has not adequately established that the needs of the petitioning entity will provide permanent, full-time religious work for the beneficiary in the future. The list of the proffered job duties, as outlined above, does not evidence a full-time occupation. Part-time participation in church activities is not a qualifying job offer for the purposes of an employment-based visa petition. The petitioner submitted no evidence that the beneficiary has been engaged full-time in the responsibilities of the proffered position. The petitioner's part-time employment of the beneficiary while in R-1 visa status reflects negatively on the bona fides of the job offer as a full-time job.

The evidence does not establish that the petitioner has extended a valid job offer to the beneficiary.

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[1] The petitioner has apparently confused its offer of employment to the beneficiary with that of another beneficiary, who it is also sponsoring. The letter submitted with the petition refers to and stated the position offered to him was as a deacon, was temporary in nature, and would have an annual salary of $14,400. In response to the director's request for evidence (RFE) dated March 25, 2003, the petitioner stated that it would provide with a monthly salary of $1,920 plus living expenses. It is noted that the proffered salary to is less than the beneficiary reported in 2002.

Beyond the decision of the director, the petitioner has not established that it is a bona fide religious organization or that the religious organization with which the beneficiary was affiliated is related to the petitioner. The petitioner has not established that the beneficiary possessed the required two years membership in the denomination. For these additional reasons, the petition must be denied.

The petitioner states that the church is the Assembly of A letter from the petitioner's senior pastor dated June 10, 2003, indicates that the petitioner's headquarters is in Boston, Massachusetts. The financial documentation submitted by the petitioner and evidence of the tax-exempt status of the organization refer to the Assembly of God in Boston.

In a letter dated January 2003, Reverend Ouriel de Jesus, president of the Assembly of God in Boston, states that the Boston church has organized and supported congregations in several states and that the petitioner is "affiliated to [sic] the International headquarters Assembly of God in Boston Ministry." The record contains documentation that indicates that the Boston is incorporated in the commonwealth of Massachusetts and that the petitioner is incorporated in the state of Georgia. The financial statements submitted by the petitioner are for the Assembléia De Deus Em Boston. Note 1 of the document states that the church has congregations in various locations in Massachusetts, but does not refer to congregations in other states. The evidence suggests that the petitioner, while affiliated with the Boston, is a separate legal entity.

The petitioner submitted an August 31, 1964 letter from the Internal Revenue Service (IRS), which informs the General Council of the Assemblies of God that it has been granted a group tax-exempt status for its subordinate units whose names appear in its 1964 directory. The petitioner also submitted a copy of an April 18, 1998 letter from the IRS to the Assembléia De Deus De Boston granting it tax-exempt status under sections 509(a)(1) and 170(b)(1)(A)(i) of the Internal Revenue Code (IRC). The letter does not grant a group exemption for the Assembléia De Deus De Boston.

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:
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> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
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> (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
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> (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 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 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 has not established that it falls under the group tax exemption granted to the General Council of the Assemblies of God or that it is the same entity specified in the exemption granted to the Boston. The evidence submitted by the petitioner does not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). Thus, the petition also must be denied for this reason.

The petitioner did not identify the name of the church of which the beneficiary was a member while he was in Brazil. Although the petitioner states that it shares the same faith and doctrines as the Brazilian church, no evidence in the record corroborates this or indicates that the Brazilian church is the same denomination as the petitioning church. The evidence reflects that the beneficiary entered the United States in 2001 and began his association with the petitioner. The evidence does not establish that the beneficiary was a member of the petitioner's denomination for two years preceding the filing of the visa petition. This constitutes another ground for denial of the petition.

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 petition will be denied.

ORDER: The decision of the director is affirmed. The petition will be denied.