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 26 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as pastor. 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. The director further determined that the petitioner had not extended a valid job offer.

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 June 17, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

The petitioner stated that the beneficiary has been working for the past seven years prior to the filing date of the petition as a pastor in its church in Colombia. In a letter from counsel, who is also an official of the church, the petitioner stated that, for three years immediately preceding the filing date of the visa petition, the beneficiary served as a full-time pastor in charge of a church in Bogotá, Colombia and that her only absence was to attend a Bible institute where she received her degree as pastor in the doctrine of the church. The petitioner submitted a copy of a 1998 diploma issued to the beneficiary from the petitioner and its Bible Institute of Ministry and Bestowal, reflecting that the beneficiary had completed a course of study in theology.

In response to the director's request for evidence (RFE) dated March 31, 2003, the petitioner stated that, although the beneficiary had been present in the United States since December 2001 on an R-1 visa, she had received no remuneration from the petitioning organization in the United States. Instead, according to the petitioner, she was paid by the petitioner's organization in Colombia. The petitioner submitted a statement from the petitioner's accountant in Colombia, certifying that the beneficiary had worked 48 hours per week and received $16,082.00 pesos (including retirement benefits) in 2000, $19,006.00 pesos in 2001, and $20,468.00 pesos in 2002.

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.

The petitioner's statements and evidence regarding remuneration to the beneficiary appear to be contradictory. In his letter accompanying the petition, counsel states, "The ministry does not pay a salary to it's ministers while in the process of obtaining a work permit or adjusting their status, our religious workers are treated as volunteers while their petitions are being processed and they receive room and board paid by the church in addition to a stipend for clothing, travel and necessities." However, counsel goes on to state, "The ministry does provide the family with compensation abroad so as not to conflict with United States Immigrations Laws and regulations." In response to the RFE, the petitioner indicated that the beneficiary receives her salary overseas until she receives her employment authorization from CIS or is transferred to another post. The petitioner again states that the beneficiary receives room, board and expenses while in an R-1 status.

Although the petitioner states that it paid the beneficiary a salary from its Colombian account, and submits a statement from a licensed public accountant indicating the amount of her church salary from 1997 to 2003, as noted by the director, the petitioner submitted no evidence of receipt of these funds by the beneficiary. The petitioner submitted no contemporaneous evidence in the form of payment vouchers, cancelled checks, bank statements or tax records. 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). The statement by the accountant, who is apparently an employee of the petitioner, does not provide independent corroborative evidence of remuneration paid to the beneficiary.

Further, although the petitioner states that it provides room and board and other expenses to the beneficiary while she awaits a decision on this petition, it provided no evidence of such remuneration.

In his letter accompanying the petition, counsel stated that the beneficiary worked 48 hours per week as a "full-time preacher in charge of a church in Bogotá, Colombia," while in response to the RFE, counsel stated that the beneficiary "has been the Assistant pastor of one of our six (6) Mega Temples in Bogotá." The petitioner does not identify the church at which the beneficiary served or provide evidence of the period and nature of her service there. The petitioner also provides no evidence of the beneficiary's work in the United States since her arrival in 2001.

The evidence is insufficient to establish that the beneficiary has been working continuously as a pastor during the two years immediately preceding the filing of the visa petition.

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

The record contains a copy of the part of the petitioner's bylaws regarding selection of ministers. According to the bylaws, the prospective minister must undergo an apprenticeship, training, baptism by water and "in the 'Spirit,'" and attend the Bible Institute. Although the bylaws state that "before being ordained," the minister in training must be baptized, the provision also speaks of the "process of ordainment," which "comes through years of working and service, then the selection or 'calling' from God, the receiving of 'gifts' from the Holy Spirit . . . and eventually the formal teaching of the doctrine at the Bible Institute after which the minister is given a ministry or church to which he is then assigned."

The record contains a copy of the beneficiary's "certificate of academic recognition" from the petitioner's Bible institute, indicating that she has completed the required course of training. While the evidence is insufficient to establish that the beneficiary has worked continuously as a pastor during the requisite two-year period, the evidence is sufficient to establish that the beneficiary is qualified for the position of minister within the petitioner's denomination.

The petitioner must also demonstrate that a qualifying job offer has been tendered.

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 states that the beneficiary will be compensated at a rate of $300.00 per week for the position of head pastor of its church in Miami. The petitioner also states that the beneficiary has served in its churches for the past seven years, and that the offer of employment for the proffered position is full time and permanent. The duties of the proffered position as outlined by the petitioner indicate that the beneficiary will be expected to work an average of more than eight hours per day. The beneficiary has trained with the petitioner over a period of

several years, and according to the petitioner has performed similar duties for over seven years. The evidence is sufficient to establish that the position offers full-time and salaried employment.

The beneficiary entered the United States in December 2001 on an R-1 visa. The director stated that it could not be determined that the beneficiary's sole purpose in entering the United States was to work for the petitioner.

We withdraw this statement by the director. The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa.

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.