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

C-1

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 7 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 APPLICANT:

[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.

for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the California Service Center. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reconsider. The motion will be dismissed.

The petitioner states that it is a church. It seeks classification of 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), in order to employ him as a pastor. The service center 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.

On appeal, counsel asserted that the service center director erred in her finding that the beneficiary of a special immigrant religious worker petition must have been a full-time, salaried religious worker during the two-year qualifying period. Counsel further asserted that the petitioner had submitted sufficient evidence to establish that the beneficiary had two continuous years of experience as a full-time religious worker during the requisite period.

The director of the AAO dismissed the appeal based on a finding that the petitioner had not overcome the basis for the denial of the petition. The director noted that the petitioner had also failed to establish that: it had the ability to pay the beneficiary the proffered wage; it had extended a valid job offer to the beneficiary; the beneficiary was qualified for a religious worker position within the religious organization; and, the proffered position qualified as a religious vocation or occupation.

On motion, the petitioner submits a statement and additional evidence.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in § 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 Revenue 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).

8 C.F.R. 204.5(m)(1) states, in pertinent part:

> 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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue Code of 1986 at the request of the organization. All three types of 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.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The issue raised by the director is whether the petitioner has 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 petition was filed on April 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing services in a religious vocation or occupation during the period from April 26, 1999 to April 26, 2001. The record shows that the beneficiary last entered the United States on May 28, 1991, as a nonimmigrant B-2 visitor. The beneficiary's authorized stay expired on May 28, 1992, and he has remained in the United States in unlawful status since that date. The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er) or Amerasian, that the beneficiary has engaged in unauthorized employment in the United States. The petitioner stated that the beneficiary worked as a grocery store package clerk and as a "valet park" at a car dealership in Dallas, Texas, from 1991 through March 1999. In a letter dated January 2, 2002, Anthony Cabildo, president of the petitioning church, stated that the beneficiary began working for the church at its original location in Dallas, Texas, in April 1999. He further states that the church relocated to California in February of 2000, and asserts that the beneficiary worked exclusively for the church from April 26, 1999 to April 26, 2001.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. *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 or 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).

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).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or 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.

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 or 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 salaried. To find otherwise would be outside the intent of Congress.

In this case, the petitioner has not established that the beneficiary was a full-time, salaried religious worker throughout the two-year qualifying period. Although the petitioner asserts that the beneficiary worked 70 to 80 hours a week as a pastor during the requisite period, the record does not contain sufficient evidence to corroborate this assertion. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1973).

The petitioner states that the beneficiary was compensated in the amount of $800 per month during the qualifying period, but the evidence of record does not support that assertion. The petitioner's 2000 Internal Revenue Service (IRS) Form 990-EZ, Return of Organization Exempt From Income Tax, indicates that the beneficiary was an uncompensated church worker during that year. The record contains copies of paychecks issued to the beneficiary by the petitioning church on the following dates: July 12, 1999; August 3, 1999; October 28, 1999; November 7, 1999; December 31, 1999; January 30, 2001; March 14, 2001; and April 16, 2001. The record contains no evidence to show that the beneficiary ever cashed these paychecks, and the petitioner has not provided copies of any paychecks issued to the beneficiary in the year 2000.

On motion, the petitioner states that the beneficiary has served the petitioning church as its pastor for four years. The petitioner submits a copy of the beneficiary's IRS Form W-2, Wage and Tax Statement, for the year 2002. This document relates to employment that took place after the two-year qualifying period and cannot be accepted as proof that the beneficiary was a full-time, salaried religious worker during the requisite period. In view of the foregoing, it is concluded that the petitioner has not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition, and the petition must be denied for this reason.

It is further noted that on motion, the petitioner did not address the additional grounds for denial raised by the director of the AAO.

In reviewing an immigrant visa petition, Citizenship and Immigration Sesrvices must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See

Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.