**U.S. Department of Homeland Security**
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: 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: SELF-REPRESENTED

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

**Discussion:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The decision of the director will be withdrawn, and the petition will be remanded to the director for further action and consideration.

The petitioner 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 perform services as a "Director of Bibles International." The petitioner states that it intends to provide the beneficiary with a monthly salary of $3,873, in addition to monthly benefits totaling $935.

The director determined that the petitioner had not established that it qualifies as a bona fide non-profit religious organization. On appeal, the petitioner asserts that the evidence submitted establishes that it has been recognized by the Internal Revenue Service (IRS) as tax-exempt under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986, as it relates to organizations classified under section 170(b)(1)(A)(vi).

The Form I-360, Petition for Amerasian, Widow or Special Immigrant was received by Citizenship and Immigration Services (CIS) on September 25, 2001. Part 9 of the Form I-360, the signature block, indicates that the petitioner's authorizing official is [redacted] However, the petition has not been signed by Mr. [redacted]r by any other entity entitled to file the petition. Part 10 of the Form I-360, indicating the name of the person who prepared the Form I-360, contains the signature of [redacted] of International Expediters, Inc., [redacted] Virginia. There is no Form G-28, Notice of Entry of Appearance of Attorney or Representative, contained in the record.

The regulation at 8 C.F.R. § 204.5(a)(1) states that a petition is considered properly filed only if it is accepted for processing under the provisions of 8 C.F.R. § 103.

The regulation at 8 C.F.R. § 103.2(a)(2) states, in pertinent part:

> *Signature.* An applicant or petitioner must sign his or her application or petition. . . . By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

In addition, the regulation at 8 C.F.R.§ 103.2(a)(7) states, in pertinent part:

> *Receipt date.* (i) (*General*). . . . An application which is not properly signed or is submitted with the wrong fee shall be rejected as improperly filed. Rejected applications, . . . will not retain a filing date.

The AAO has no jurisdiction over an appeal based upon an improperly filed petition or application that should have been rejected.

The director inadvertently accepted the petition without the proper signature of the petitioner, the petitioner's authorizing official, or by any other entity entitled to file the petition. Therefore, the decision of the director will be withdrawn. The petition will be remanded to the director in order to obtain the petitioner's signature.

It is noted that the sole issue raised by the director in his denial is whether the petitioner has established that it qualifies as a bona fide non-profit religious organization.

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 section 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 section 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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement to Form 1023 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 record includes the following documentation concerning the petitioner's tax-exempt status:

- A photocopy of a letter from the IRS dated January 20, 1944, granting The General Council of Cooperating Baptist Missions of North America, 977 The Arcade, 4 Celevland, Ohio, tax-exempt status under the provisions of section 101(6) of the IRC.

- A photocopy of a letter from the IRS, dated March 14, 1997, stating that Baptist Mid-Missions, Cleveland, Ohio, was previously granted, on January 20, 1944, tax-exempt status under section 101(6) of the IRC [now section 501(c)(3) of the IRC of 1986]. The letter indicates that the January 20, 1944 determination is still in effect and further states: "We have classified your organization as a publicly supported organization, and not a private foundation, because it is described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the [IRC]."

- A photocopy of a letter from the IRS, dated August 1, 1989, stating, in pertinent part:

  > [The petitioner] is a corporation, not for profit, formed under the laws of [the State of Ohio]. [The petitioner] is a charitable organization under section 501(c)(3) of the [IRC]. The general purpose of [the petitioner] is to serve as an agency to facilitate cooperation among and administer the worldwide charitable missionary work of [Orthodox Baptist Churches] by receiving donations and distributing such funds to achieve those purposes. [The petitioner] also

> performs administrative and payroll functions on behalf of those churches with respect to missionary personnel.
>
> [The petitioner] does not conduct any commercial enterprise, nor are its funds derived from any commercial ventures. The charitable work of this institution consists of religious, social, moral and cultural education, general social work, and assistance among poor and uneducated peoples. This work is done through missions and missionaries located world-wide.
>
> [The petitioner] shares common religious bonds and convictions with [The General Association of R and is officially recognized and approved as an "approved" agency under Article VII of the constitution of [The General Association of Regular Baptist Churches].

The director's decision states that the petitioner had not been granted tax-exempt status as a religious organization, but rather as a charity that receives a substantial part of its support "in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public." The director also stated: "This is not the [section of the IRC] relating to religious organizations. . . . Therefore, the petitioner has failed to establish that it qualifies as a nonprofit organization."

The director further stated that the IRS letter of March 14, 1998, indicated that the petitioner was granted tax-exempt status under section 501(c)(3), as an organization described in section 170(b)(1)(A)**(iv)** [emphasis supplied] of the IRC. In fact, as indicated above, the IRS letter stated that the petitioner was granted tax-exempt status under section 501(c)(3), as an organization described in section 170(b)(1)(A)**(vi)** [emphasis supplied] of the IRC. On appeal, the petitioner makes note of this error and reaffirms that it has been granted tax-exempt status under section 501(c)(3), as an organization described in section 170(b)(1)(A)(vi) of the IRC.

The IRS granted tax exempt status to the petitioner as a foundation and publicly supported organization described in section 509(a)(1) and 170(b)(1)(A)(vi), and not under section 170(b)(1)(A)(i), as it relates to religious organizations. The IRS has found the petitioner to be eligible for tax exemption as a "publicly supported foundation" and not as a "religious organization." As noted above, the regulations require that the petitioner demonstrate that it is exempt from taxation in accordance with § 501(c)(3) of the IRC *as it relates to religious organizations.* Therefore, the petitioner has not shown that it has met the requirements under 8 C.F.R. § 204.5(m)(1) which state, in pertinent part, that 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.*" [Emphasis added.]

As an alternative, the petitioner could have submitted documentation that would have complied with the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B). Although the petitioner submitted a photocopy of its "constitution," that document does not contain a proper dissolution clause. Furthermore, the petitioner did not submit a completed IRS Form 1023, or Schedule A attachment to IRS Form 1023, pertaining to churches. Therefore, the regulatory requirements of this provision have also not been met.

The submissions contained in the record do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B).

Beyond the decision of the director, it is also noted that the record does not contain sufficient evidence to establish that: (1) the proposed position qualifies as a religious vocation or occupation; (2) the beneficiary is qualified to engage in a religious vocation or occupation; (3) the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition; and (4) the petitioner has the ability to pay the beneficiary the proffered wage.

In view of the foregoing, the petition will also be remanded to the director for further consideration of the issues noted above. The director may request any additional evidence he considers pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

**ORDER:** The decision of the director is withdrawn. The petition is remanded to the director for further action and consideration.