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

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 28 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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

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 an "international, interdenominational, Christian organization." 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 mission liaison planner. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also 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 it had extended a valid job offer to the beneficiary.

Different counsel represented the petitioner during the initial and appellate stages of these proceedings. Current counsel has provided no additional evidence or argument in support of the petition, and use of the term "counsel" in this decision refers to prior counsel.

On appeal, the petitioner submits a brief and additional evidence. In addition, counsel requests oral argument. Oral argument, however, is limited to cases where cause is shown. It must be shown that a case involves facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, counsel's request for oral argument is denied.

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)(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 § 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

(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.

The petitioner submitted a copy of a December 23, 1985 letter to Youth With a [redacted] which the Internal Revenue Service (IRS) granted tax exempt status under § 501(c)(3) of the Internal Revenue Code (IRC) to that organization as a foundation and publicly supported organization described in section 509(a)(1) and section 170(b)(1)(A)(vi) of the IRC. The petitioner's name was changed to its current form in 1996.

As noted by the director, section 170(b)(1)(A)(vi) of the IRC also pertains to organizations that are not religious in nature. 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 as a religious organization 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 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. On appeal, the petitioner submitted a copy of its organizing bylaws. The evidence submitted by the petitioner does not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B), and fails to substantiate the petitioner's claim as a bona fide religious organization.

The regulation at 8 C.F.R. § 204.5(m)(1), which echoes the statutory language, 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:

(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 § 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

(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.

The petitioner submitted a copy of a December 23, 1985 letter to Youth With a Mission-Maritime Mercy Ministries in which the Internal Revenue Service (IRS) granted tax exempt status under § 501(c)(3) of the Internal Revenue Code (IRC) to that organization as a foundation and publicly supported organization described in section 509(a)(1) and section 170(b)(1)(A)(vi) of the IRC. The petitioner's name was changed to its current form in 1996.

As noted by the director, section 170(b)(1)(A)(vi) of the IRC also pertains to organizations that are not religious in nature. 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 as a religious organization 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 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. On appeal, the petitioner submitted a copy of its organizing bylaws. The evidence submitted by the petitioner does not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B), and fail to substantiate the petitioner's claim as a bona fide religious organization.

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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 January 25, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a mission liaison planner throughout the two-year period immediately preceding that date.

To establish that the beneficiary has the required two years experience, the petitioner submitted a résumé of the beneficiary's religious work experience. The petitioner also stated that the beneficiary volunteered her time and services during the immediate two years preceding the filing of the visa petition, and that she was able to support herself with her personal financial assets.

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 normally be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

In order to evaluate whether the beneficiary had engaged in full time employment, the director, in a request for evidence (RFE) dated March 14, 2003, requested that the petitioner provide a detailed description of the beneficiary's qualifying work experience, including job title, duties, and hours of work. In response, the petitioner submitted a copy of the beneficiary's job description, which indicates it was revised in May 2003, but provided no further details on the beneficiary's work experience during the two-year qualifying period.

On appeal, the petitioner submitted a representative daily work schedule for the beneficiary for the two-year period immediately preceding the filing of the petition. The schedule shows that the beneficiary worked, on average, 32.5 hours per week, and indicates some of the major projects and tasks on which she worked.

The regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

With the petition, the petitioner listed the beneficiary's training and experience. The petitioner failed to specify the beneficiary's experience during the qualifying two-year period. In response to the RFE, the petitioner submitted a job description, which it states "aptly depicts" the beneficiary's work with it. However, as noted above, the job description indicates it was modified in May 2003. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Furthermore, the duties as listed in the job description do not establish that the beneficiary worked in a full time capacity for the petitioner during the two-year period immediately preceding the filing of the petition. As the petitioner provided no evidence of the beneficiary's work schedule and as the beneficiary donated her services to the petitioner, no contemporaneous evidence was provided to establish that the beneficiary worked continuously in a qualifying religious occupation the full two years preceding the filing of the visa petition.

The petitioner also submitted copies of the beneficiary's Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, for the years 2001 and 2002. The beneficiary indicated that she and her husband jointly owned three foreign bank accounts, each with an unspecified value of between $100,000 and $1,000,000. The petitioner also submitted a copy of the beneficiary's 2001 and 2002 Form 1040, U.S. Individual Income Tax Return. The returns, filed jointly with her husband, list the couple's total income for 2001 as $4,924.00 and $7,651.52 for 2002. With her husband, the beneficiary listed three dependent children.

The petitioner stated that the beneficiary's personal income was sufficient to allow her to purchase a home and send her children to private school. However, other than the Forms TDF 90-22.1 noted above, no

corroborating evidence appears in the record. 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 submitted no evidence of the beneficiary's financial independence such as bank or investment statements that may reflect additional wealth or source of support. Further, the petitioner submitted no evidence of the beneficiary's income during the year 2000.

On appeal, counsel states that the beneficiary received compensation in the form of food items given to the petitioner from the East Texas Food Bank, some free meals and full room and board when on the ship. Counsel provides no evidence to substantiate these statements. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner does not indicate when or how often the beneficiary received the food donations or how often she resided aboard the ship. The evidence is insufficient to establish that the beneficiary relied principally upon her own assets to support herself during the two years immediately preceding the filing of the visa petition.

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.

In response to the RFE, the petitioner stated that it intended to compensate the beneficiary at a rate of $30,000 per year. On appeal, however, the beneficiary's résumé of religious work was modified to indicate that the petitioner does not intend to compensate the beneficiary in any manner, and that the beneficiary would be dependent upon her private and personal resources for financial support. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). An offer of unsalaried and unremunerated work is not a qualifying job offer for the purposes of this immigrant visa petition. 8 C.F.R. § 204.5(m)(4).

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must be directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner states that it is an interdenominational organization founded in 1978.[1] It lists its principal activities as evangelism, training and mercy ministry or "caring programs" that provide services such as food and clothing distribution, refugee relief assistance, literacy training and building construction. The petitioner has a diverse staff with many different positions. According to the job description, the duties of the proffered position involve organizing short term experiences in the mission field, facilitating cross-cultural and religious understanding for participants, leading Bible studies and cross-cultural workshops and training for the petitioner's personnel, and assisting in cross-cultural Christian discipleship assignments. These duties are related to the mission and function of the petitioner, and would appear to qualify as a traditional occupation within the Mercy Ships organization. Nevertheless, because the organization has not established that it is a bona fide religious organization and because the petitioner has failed to offer remuneration, the petitioner has failed to offer qualifying employment in a religious occupation.

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.

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[1] In a letter dated May 1, 2003, the president/chief executive officer of the petitioner states that the petitioner has been in existence since 1976.