**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:

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, 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 minister. 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. The director determined that the petitioner had failed to establish that it had extended a valid job offer to the beneficiary, or that it had the ability to pay the beneficiary the proffered salary.

On appeal, the petitioner submits 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;
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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
> >
> > (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 an 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 petitioner indicated it was not aware of the requirement to submit evidence of its tax-exempt status until it received the director's request for evidence (RFE) dated June 14, 2002. The petitioner indicated it had requested a ruling from the Internal Revenue Service (IRS), but had not received the ruling prior to responding to the RFE. On appeal, the petitioner submits an October 15, 2002 letter from the IRS granting it tax-exempt status as a church under sections 501(c)(3) and 170(b)(1)(A)(i) of the Internal Revenue Code.

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 Internal Revenue Service 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 Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed Internal Revenue Service 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 submitted no evidence with its petition or in response to the RFE to establish that it had been granted tax-exempt status under section 501(c)(3) of the IRC or that it was eligibile for such an exemption.

The regulation at 8 C.F.R. § 103.2(b)(12) states:

> *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing*. An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed.

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). As the petitioner failed to provide evidence of its tax-exempt status as a religious organization with the petition or in response to the RFE, the petition must be denied.

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 March 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

On appeal, the petitioner submits a document entitled "Evidence of the Employment." The document indicates that the beneficiary was a paid "devoted Evangelist" from February 1997 to August 2000 with the [redacted] The document is not signed and no evidence in the record indicates the position of the person who drafted the document. Further, the translation submitted by the petitioner does not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Thus this document has no evidentiary value in these proceedings. Additionally, the document does not reflect the hours or compensation received by the beneficiary during the time she was associated with the [redacted]

The petitioner states that the beneficiary serves it as a volunteer minister, supported by the petitioner's pastor and other church members. The record contains no evidence of when the beneficiary became associated with the petitioner or in what capacity. The record does not reflect what work, if any, that the beneficiary performed from September 2000 to March 2001. The evidence does not establish that the beneficiary continuously worked in a qualifying vocation or occupation for 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.

The petitioner initially indicated that the petitioner's pastor and the beneficiary's husband would be responsible for her financial needs. On appeal, the petitioner indicates that the beneficiary will work for 40 hours a week and will be paid $1,500. Although the frequency of the compensation is not specified, we will assume it to be on a monthly basis. The petitioner indicates that the compensation will be in the nature of full living expenses, such as housing, transportation, and food.

The petitioner indicates it has no other paid employees, and that its current pastor is a part time volunteer. This raises issues as to the legitimacy of the job offered to the beneficiary, especially as the beneficiary's expenses have not previously been borne by the petitioner and the fact that the petitioner, as discussed below, has not established it has the ability to pay the beneficiary the proffered salary. The petitioner has provided no evidence of the work that the beneficiary has performed for it in the past and the record does not establish that the needs of the petitioner will provide permanent, full-time religious work for the beneficiary. Part-time work is not a qualifying job offer for the purpose of an employment-based visa petition. Further, as the petitioner indicates it currently has no salaried employees, the permanency of the proffered position is called into question as well as the petitioner's need for an immigrant visa.

A petitioner must also demonstrate its ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

As discussed above, the petitioner originally stated that the beneficiary's husband and the petitioner's pastor would meet the beneficiary's financial needs. On appeal, however, the petitioner states that the church will compensate the beneficiary for her living expenses, including food, shelter and transportation. The petitioner submitted a document entitled "Yearly Church Finance Record 2002 Jan. – Nov." and includes the monthly income and expenditures from December to November. The petitioner also submitted a statement from a credit union indicating it had a balance of $20,261.91 as of December 17, 2002.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. Further, the evidence submitted appears to have been prepared specifically for the purpose of this petition and is based primarily on the representations of management. Additionally, the petitioner submitted no evidence of its ability to pay the proffered salary effective as of March 30, 2001, the date of the petition.

Beyond the decision of the director, the petitioner has not established that the beneficiary possessed the required two years membership in the denomination, and this deficiency constitutes another ground for dismissing the appeal. The regulations at 8 C.F.R. § 204.5(m)(1) and 8 C.F.R. § 204.5(m)(3)(ii) require that the religious worker must have been a member of the denomination of the religious organization at which she proposes to work throughout the two years immediately preceding the filing date of the petition.

The record indicates that the beneficiary was a member of a Presbyterian church from February 1997 to August 2000. The record contains a "Certificate of The Evangelism Ministry" from the petitioner dated April 7, 2000. The record contains no evidence that the petitioner and the beneficiary's prior church are of the same denomination or that there is any affiliation between the two churches.

The petitioner has not established that the beneficiary was a member of the religious denomination of the petitioning organization during the two-year period preceding the filing date 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.