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

U.S. Citizenship and Immigration Services

C-1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 13 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant 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 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, 8 U.S.C. § 1153(b)(4), to perform services as a minister and ministries coordinator. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a minister and ministries coordinator immediately preceding the filing date of the petition; (2) that it had offered the beneficiary a qualifying position; (3) its tax-exempt status; (4) that the beneficiary entered the United States in order to perform religious work; or (5) its ability to pay the beneficiary's proffered wage.

On appeal, the petitioner submits arguments from counsel and copies of previously submitted documents.

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) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate 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 29, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister and ministries coordinator throughout the two years immediately prior to that date.

Priscilla Foster, administrator of the petitioning church, states:

> For the two years immediately preceding the time of application for admission, [the beneficiary] has been a member of [the] Pentecostal Church in Temple, Texas and Austin, Texas. Since June 2000 until [the] present he is [a] member of our church and is volunteering for our church in the capacity of Minister and Ministries Coordinator. From August 1996 to July 1999, he was a member and part of [the] family of Banah Full Community Church Evangelism and Mission in Austin, Texas and volunteered as Associate Pastor since 1997 to 1999. . . .
>
> Currently, since [the] year 2000, he is a student at Baylor University in Temple, Texas studying [for a] PhD in Religion. From 1999 to May 2000, he was [studying for] a Master's Degree in Emory University, Atlanta, Georgia in Theology and graduated on May 15, 2000. . . .
>
> Presently, [the beneficiary] volunteers as our Ministries Coordinator and performs pastoral duties as a volunteer minister. . . . In an effort to help the ministries work effectively and efficiently, [the beneficiary] is managing their diverse efforts by organizing a collective calendar. . . .
>
> Presently [the beneficiary] also performs the duties of a minister of religion. Because he is licensed and ordained as a minister in Kenya, he has full authority to conduct religious worship, baptism, weddings and funerals.

The above chronology indicates a one-year gap, from July 1999 to June 2000, in the beneficiary's ministerial activities, while the beneficiary was a student at Emory. [redacted] senior pastor of Christ Fellowship Atlanta in Norcross, Georgia, states that the beneficiary and his family were "members of our fellowship during his year of studies at Emory University from 1999-2000." [redacted] asserts that the beneficiary "has a heart to minister the Gospel," but he does not state that the beneficiary actually acted as a minister while he was at Christ Fellowship Atlanta. Thus [redacted] letter does not close the gap in the beneficiary's activities.

The petitioner submits additional letters, which concern periods of time that fall outside of the 2000-2002 qualifying period. The petitioner also submits a copy of the beneficiary's resume, which lists his work until 1999, and his current work for the petitioner. The resume does not mention any work at Christ Fellowship Atlanta. This is consistent with the finding that the beneficiary was a member of that church, but not a minister or ministries coordinator there.

The director informed the petitioner that the director intended to deny the petition, in part because the available evidence did not establish two years of continuous activity as a minister during the qualifying period. The director observed that the beneficiary was a student for much of the qualifying period. In response, counsel states "for ordained members of the clergy the theological studies may be considered as not interruptive of the carrying [on] of their 'religious vocation.'" While it is true that studies do not always represent a disqualifying interruption, we must consider the extent to which the beneficiary carries on the vocation of a minister during those studies. An individual who volunteered as a minister for only nine hours a week, while studying full-time, was found not to have been continuously carrying on the vocation of a minister. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). If the beneficiary's studies prevent him from working *full-time* as a minister, then those studies amount to a disqualifying interruption.

The director denied the petition, stating that part-time, volunteer work is not qualifying, continuous activity as a minister. On appeal, counsel repeats earlier claims regarding the beneficiary's past experience. It remains that these claims involve a significant gap in the first months of 2000, during which time the petitioner has established that the beneficiary was a member of Christ Fellowship Atlanta, but not that the beneficiary worked as a minister.

The evidence presented is insufficient to establish that the beneficiary has continuously carried on the vocation of a minister throughout the qualifying period. There is also no evidence that the beneficiary ever worked as a ministries coordinator before he began his association with the petitioner in June 2000, which further prevents the conclusion that the beneficiary has worked in the position or performed the relevant duties throughout the qualifying period.

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines a "minister" as an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The director determined that the petitioner has not shown that the petitioner's denomination has authorized the beneficiary to perform all the duties of the clergy in that denomination. The record indicates that the petitioner considers the beneficiary to be an ordained minister rather than a lay preacher or other non-clergy religious worker. [redacted] has indicated that the beneficiary "has full authority to conduct religious worship, baptism, weddings and funerals." There is no indication, however, that the beneficiary has, in fact, conducted any baptisms, weddings, or funerals, or other ceremonies that distinguish an ordained minister from a lay preacher. When determining an alien's eligibility for classification as a minister, the Board of Immigration Appeals examined the issue of whether the alien had actually been called upon to fulfill all the functions of a minister. *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

We note that, on his resume, the beneficiary states that his "objective" is "ministry" at the petitioning church, but he lists his current work there not as a minister or pastor, but as "ministries coordinator." While the beneficiary may have worked as a minister in the past, and may intend to do so in the future, his work as a ministries coordinator (apparently the beneficiary's primary function) does not appear to be the vocation of a minister.

Further, while the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, *supra*.

The next issue concerns the petitioner's tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit 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

> (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 organizations.

The petitioner has submitted a copy of a letter from the Internal Revenue Service (IRS), establishing the tax exemption for United Pentecostal Church International (UPCI), with which the petitioner claims to be "associated." The IRS letter does not refer to a *group* exemption, or otherwise indicate that associated churches are also exempt. The director found that the petitioner has not established that it is a qualifying tax-exempt church. On appeal, the petitioner does not address this finding.

Another issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), requires that the alien seeking classification "seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister." In this instance, the beneficiary entered the United States as a student under an F-1 nonimmigrant visa. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working as a minister.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended future entry as an immigrant, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "seeks to enter," which describes the entry as a future act. We therefore withdraw this particular finding by the director. We also note that the beneficiary's student visa was in conjunction with studies at a theological seminary, and therefore his entry as a student can hardly be construed as evidence of his intention to work in a field unrelated to religion.

The director's final cited ground concerned the petitioner's ability to pay the beneficiary's salary. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

Priscilla Foster states the petitioner's intent to pay the beneficiary "a net salary of [$]1,200 per month includ[ing] housing expenses and . . . auto allowance." The petitioner submits an unaudited profit and loss statement, reflecting a net loss of over $11,000 from January 1 to September 1, 2001.

The director instructed the petitioner to submit additional documentation to show its ability to pay the beneficiary's proffered wage from the filing date onward. In response, the petitioner has submitted a profit and loss statement for the period between January 1 and September 1, 2002, and bank statements from 2003. The record appears to be devoid of documentation regarding the petitioner's finances during the last four months of 2001 and 2002.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) 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. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Beyond the decision of the director, review of the record shows another issue which prevents approval of the petition. Pursuant to the statute at section 101(a)(27)(C)(i) of the Act, and regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A), the petitioner must establish that the beneficiary has been a member of the denomination he seeks to serve for at least two years immediately prior to the petition's filing date. 8 C.F.R. 204.5(m)(2) defines a "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

Priscilla Foster states that the petitioner "is associated with the international Pentecostal organization, the United Pentecostal Church International." The petitioner submits materials from UPCI's web site, http://www.upci.org/, setting forth various doctrinal positions of the denomination. For instance, "[i]n distinction to the doctrine of the Trinity, the UPCI holds to a oneness view of God. It views the Trinitarian concept of God, that of God eternally existing as three distinctive persons, as inadequate and a departure from the consistent and emphatic biblical revelation of God being one."

The beneficiary did not join the petitioning church until June 2000, 19 months before the petition's filing date. Prior to June 2000, the beneficiary was a member of [redacted]tlanta, which is not listed on UPCI's web site (http://wec.upci.org/churches/). According to its senior pastor, "Christ Fellowship Atlanta is a Full Gospel Church." The Statement of Faith of the [redacted]Association, available at http://www.biblical-life.com/ufgc/ufgc-2.htm, states "We Believe In . . . The Trinitarian God of the Bible, manifest in three persons: the Father, the Son and the Holy Spirit."

The above positions regarding the Trinity represent a significant doctrinal difference between UPCI, which includes the petitioning church, and the Full Gospel Churches, which include Christ Fellowship Atlanta. Therefore, we cannot find that the beneficiary has been a member of the same religious denomination throughout the two-year qualifying period. In a similar vein, we note that the African Holy Ghost Christian Church ordained the beneficiary in 1994. The record does not show what ties, if any, exist between UPCI and the African Holy Ghost Christian Church, to show that the petitioner's denomination (not just the individual petitioning church) recognizes the beneficiary's 1994 ordination.

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.