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: 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

PUBLIC COPY

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.

In this decision, the term "prior counsel" shall refer to Mark R. Weiner of the Immigration Center of America. The term "counsel" shall refer to the present attorney of record.

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. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, counsel argues that the petitioner has complied with the necessary requirements, and that the director's denial is arbitrary and capricious.

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 July 27, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

The initial submission contains documents indicating that the beneficiary was ordained prior to the qualifying period. These documents, however, offer no details about the beneficiary's experience during the two-year qualifying period. Prior counsel states only that the beneficiary "has been involved in many ministries," and Rev. Williams says nothing at all about the beneficiary's past experience. Letters and certificates cover the beneficiary's work and training, but only up to 1994, several years before the qualifying period began in July 1999.

The initial submission also contains copies of two of the beneficiary's Form 1040X Amended Income Tax Returns. The beneficiary did not specify the years to which these amended returns apply. Schedule C, attached to the beneficiary's 1999 tax return, identifies the beneficiary's "principal business or profession" as "ministory service." The beneficiary provides the business address, which is the beneficiary's home address rather than any address provided for the petitioner.

The director instructed the petitioner to submit further evidence to establish the beneficiary's continuous activity as a minister throughout the qualifying period. In response, asserts that the beneficiary has been "legally employed by us since January 1999," as shown by an R-1 nonimmigrant visa that the petitioner had obtained on the beneficiary's behalf, effective January 25, 1999. The petitioner submits copies of programs from weekly worship services, some of which mention the beneficiary, some of which do not mention him. These fragmentary materials do not establish that the beneficiary has worked continuously as a minister for the petitioner, and the many programs that do not mention the beneficiary's name raise the question of why the beneficiary was not involved in those services, and what he was doing instead.

The director denied the petition, stating that the petitioner had failed to submit Forms W-2 and other contemporaneous records that would serve to confirm the beneficiary's continuous employment. The director observed that the beneficiary would not have been exempt from federal income tax withholding, and the petitioner would not have been exempt from quarterly wage reporting requirements. Therefore, the director found, such documentation ought to exist and be available for inspection.

On appeal, counsel states that the petitioner "is a small fundamentalist church which pays pastors without the traditional recordkeeping found in larger mainstream denominations." The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the assertion that the petitioner does not keep financial records hardly cannot, will not, and does not relieve the petitioner of its burden of proof.

Counsel cites "attachment 15" as evidence of the petitioner's payments to the beneficiary. Attachment 15 comprises the previously-submitted Form 1040X Amended Income Tax Returns. These documents do not mention the petitioner at all, let alone confirm that the petitioner was the source of the beneficiary's income. The amended returns, for unspecified years, are not accompanied by Forms W-2 or 1099-MISC, and they are not certified by the Internal Revenue Service. Because they are amended forms, they are not contemporaneous evidence of income. Therefore, the forms are of diminished value.

The evidence submitted by the petitioner is not sufficient to establish the beneficiary's continuous, full-time work as a minister at the petitioning church. The beneficiary's R-1 religious worker visa is not proof of this work, because, by necessity, the nonimmigrant visa was approved *before* the claimed work took place.

The remaining issue concerns the job offer. The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to set forth various specifics regarding the terms of employment offered to the beneficiary. Rev. Benedict Williams,

pastor of the petitioning church, states that the beneficiary "is offered permanent full-time employment in the religious position of Minister."

The director found that "[t]he petitioner has not provided any evidence to substantiate [that] the proffered position is a permanent employment [sic]. The petitioner and beneficiary have not entered into any employment contract, and the beneficiary, as far as the record evidences, has not been receiving remuneration for services previously rendered." The purpose of this finding is not clear. The petitioner claims to have paid the beneficiary, and has identified the job offer as permanent. Perhaps the director is questioning whether the petitioner has extended a *bona fide* job offer, but this section of the director's decision is undeveloped.

Beyond the finding of the director, another issue raises concerns. 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 record contains nothing from the Internal Revenue Service (IRS) to show that the petitioner, individually, is recognized as tax-exempt. Instead, the petitioner submits an IRS exemption letter pertaining to the Church of God headquarters in Cleveland, Tennessee, and a letter from [redacted] state overseer for the [redacted], in Florida. [redacted] states that the petitioning church "is a bona-fide body of our religious denomination." The record contains nothing, however, establishing a direct link between the petitioning church and the mother church in Tennessee. The mother church's IRS letter specifically requires that church to submit an annual roster of churches covered by the group tax exemption. Because this annual roster is required by law, it presumably exists, and it would definitively settle the issue of whether the petitioner is formally affiliated with the mother church (and thus covered by the group exemption). The roster, however, is not in the record, nor is any documentation formally linking the mother church in Tennessee with the claimed Florida state headquarters.

We note that, to qualify for the relevant tax exemption, an organization must include in its Articles of Incorporation a dissolution clause, specifying the disposition of the organization's assets. The petitioner's articles of incorporation contain no such clause. Thus, as with the question of the beneficiary's past experience, there is no direct evidence, only incomplete, indirect evidence, with gaps filled in by the petitioner's claims. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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.