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:

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

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 youth minister. The director determined that the beneficiary's unpaid volunteer work does not constitute a qualifying religious occupation or vocation, and that the petitioner had not established (1) its ability to pay the beneficiary's wages, (2) its qualifying status as a tax-exempt religious organization, or (3) that the beneficiary entered the United States as a religious worker.

On appeal, the petitioner submits a statement and copies of various documents, some previously submitted.

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).

8 C.F.R. § 204.5(m)(4) requires the petitioner to describe the position offered and state how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

pastor of the petitioning church, states: "as of this date [the petitioner] does not have any employees on salary. The church actually has a membership of 42 in total. And approximately receives in tithes and offerings around $1,400.00 to $1,700.00 monthly. . . . We actually have a small group of members that work voluntarily." Rev. Santiago then lists himself, three co-pastors, two youth pastors (including the beneficiary) and a treasurer, indicating that one out of six church members is a volunteer worker there. In another letter, Rev. Santiago asserts that the beneficiary "is needed to pastor our youth congregation in this city full time."

The director denied the petition, in part because the beneficiary's unpaid volunteer work for the petitioner does not constitute an occupation. On appeal, the petitioner asserts "[o]ur Organization doesn't have employees with wage[s]," which confirms rather than rebuts the director's key finding.

The petitioner has submitted, on appeal, a letter from Maracaibo, Venezuela, indicating that the beneficiary worked there as an assistant minister from 1995 to 1999, earning $500 per month. It remains that the petitioner has not and will not pay the beneficiary in the United States. The petitioner also submits documentation showing that the beneficiary has taken courses in preparation for ordination in the ministry. That same documentation, however, shows that the beneficiary completed only two years of the required three-year course of study before he left the program.

The record shows that the beneficiary earned $1,948.00 as an employee of CES Security Company in 2002. A time sheet shows that the beneficiary worked 49 hours for CES Security during the week ending January 30, 2003. This evidence indicates that the beneficiary has been, and likely will continue to be, solely dependent on supplemental employment for support. This evidence, on its face, supports a finding of ineligibility. The special immigrant religious worker classification is an employment-based immigrant classification, rather than simply a reward for workers in secular industries, who devote some of their free time to volunteer work at their churches.

Even if the petitioner intended to pay the beneficiary, given the very small size of the petitioner's congregation, it is far from clear that the petitioner could afford to pay the wages of a full-time employee. This question leads into the next basis for denial. 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.

The petitioner submits copies of a monthly treasurer's report, reflecting $1,403.00 in donations from 36 members, and a bank statement reflecting a monthly balance of $1,733.37. Both documents are from March 2003.

In denying the petition, the director found the petitioner's documents to be insufficient, because they do not provide a full picture of the petitioner's assets and liabilities. On appeal, the petitioner submits copies of the beneficiary's own bank statements and other documents. These documents show that the beneficiary is receiving income from some unidentified source, but we cannot conclude that the petitioner is that source, in light of the repeated, consistent assertion that the petitioner does not pay the beneficiary.

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).

The petitioner had never specified any salary amount for the beneficiary's position, making it impossible to determine whether the petitioner had sufficient funds to pay such a salary. On appeal, the petitioner has made it clear that there is to be no salary or other remuneration. Rather, the petitioner states that the beneficiary's volunteer work amounts to his contribution to the church, in lieu of monetary contributions. While the beneficiary's volunteer activities are surely of great benefit to his church, such activities cannot form a sufficient basis for awarding him permanent immigration benefits.

The third cited ground for denial 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
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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 organizations.

The record contains a letter, dated October 20, 1972, from the Internal Revenue Service (IRS), establishing a group exemption for the Church of God, based in Cleveland, Tennessee. [redacted]tes that the petitioner "is a member of . . . the Florida Conference of the church of God, Inc., a non profit organization according to the Internal Revenue Service Code 501(c)(3)." The petitioner's own statement, however, cannot take the place of documentary evidence. 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 1972 IRS determination letter asserts that the church must annually submit a list of subsidiary churches covered by the group exemption. The record does not contain a copy of this list, or any other confirmation from the parent church in Cleveland to verify the petitioner's claimed affiliation.

The director, in denying the petition, cited the lack of evidence connecting the petitioner to the parent church in Tennessee. On appeal, the petitioner does not address this basis for denial, except indirectly through a photocopied identification card, which lists the addresses of both the petitioning church and the parent church in Tennessee. Even then, this card was made by the petitioner rather than by the parent church, and therefore it remains that the petitioner has not satisfactorily demonstrated formal ties to the Tennessee church that would include it within that church's group exemption.

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, the beneficiary entered the United States as a B-2 nonimmigrant visitor. Thus, the director concluded, the beneficiary did not enter the United States to work as a youth minister.

The director's finding, as stated, 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. Nevertheless, because the petitioner never has, and apparently never will, pay the beneficiary, and because the beneficiary demonstrably works in secular employment, the record supports the finding that, for immigration purposes, the beneficiary seeks to enter the United States to work for secular employers while volunteering at his church.

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.