U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 14 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: 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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner seeks classification of 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), in order to perform services as a minister. The director determined that the petitioner had not established that it qualifies as a bona fide non-profit religious organization. The director further determined that the petitioner had not established that it has the ability to pay the beneficiary a wage.

On appeal, the petitioner submits a letter and additional documentation addressing the director's concerns.

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 Revenue 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) states, in pertinent part:

> 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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue

> Code of 1986 at the request of the organization. All three types of 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 submitted the Form I-360, Petition for Amerasian, Widow or Special Immigrant, on October 25, 2002. In support of the Form I-360, the petitioner submitted a photocopy of a certificate indicating that the beneficiary was licensed as a minister by the Missionary Church, Fort Wayne, Indiana, on February 15, 1999.

On October 16, 2002, the director requested the petitioner to submit additional information and evidence in support of the petition. The petitioner responded with a letter, dated March 24, 2003, from Rev. James Keller, district superintendent. Rev. Keller stated:

> This letter is to certify that [the beneficiary] has been the full-time [redacted] Michigan, since June 4, 2001. This church is a new church planting project of [the petitioner's]. [The beneficiary] is supported by the local church and [the petitioner's] planting budget.
>
> We affirm the quality of [the beneficiary's] work for our church and respectfully request that [Citizenship and Immigration Services (CIS)] grant the appropriate immigration credentials for [the beneficiary] to continue his work for us here in Lansing, Michigan.

The Form I-360 reflects that the beneficiary is a native of Mexico who last arrived in the United States on May 11, 1986. The petitioner does not specify the beneficiary's status at time of entry, but asserts that he has been granted authorization to remain in the United States until November 21, 2005. The petitioner has failed to complete Part 4 of the Form I-360 regarding whether the beneficiary has ever been employed in the United States without the permission of Citizenship and Immigration Services (CIS).

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements. The first issue raised by the director to be addressed in this proceeding is whether the petitioner has established that it qualifies as a bona fide non-profit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3) 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:
>
> (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....

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 (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 Internal Revenue Code (IRC) of 1986, 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. The petitioner must further demonstrate that the employing organization maintained the appropriate tax-exempt recognition as of the date of filing the petition. *See Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971).

On appeal, the petitioner submits a document from the [redacted] indicating that the petitioner was "formed by consolidation of the [redacted] and [redacted] The document further indicates that the petitioner's articles of incorporation were filed with the Michigan Department of Treasury on August 27, 1969. The petitioner also submits a letter from the IRS indicating that the [redacted] Fort Wayne, Indiana, and its subordinates were recognized by the IRS as tax-exempt religious organizations under section 501(c)(3) of the IRC. The IRS letter is dated December 16, 1993.

Based on the evidence submitted, the petitioner has not overcome the director's concerns on this issue. Although the record reflects that the [redacted] and its subordinates have been granted the required tax-exempt recognition, the petitioner has not submitted evidence to establish that it is a recognized subordinate of the [redacted] For this reason, the petition must be denied.

The second issue raised by the director to be discussed in this proceeding is whether the petitioner has the ability to pay the beneficiary a wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

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 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. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as

> profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

On appeal, the petitioner submits an un-audited statement of account fund balances dated March 31, 2003, and a document entitled "Church Planting 2003 Budget worksheet." The 2003 budget indicates that in 2002, the beneficiary was compensated $200 per week, in addition to provided housing and utilities, and $400 per week in miscellaneous expenses. The $400 in miscellaneous expenses was to be reduced to $150 per week beginning on July 1, 2003. The record does not contain the petitioner's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not complied with the documentary requirements of 8 C.F.R. § 204.5(g)(2). For this reason as well, the petition must be denied.

Beyond the decision of the director, the petitioner has not established that: (1) the beneficiary had been engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition; (2) the proposed position qualifies as a religious occupation or vocation for purposes of special immigrant classification; and, (3) the beneficiary is qualified to engage in a religious vocation or occupation.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> All three types of 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 petition was filed on October 25, 2002. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two-year period beginning on October 25, 2000.

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

> *Minister* means 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.

In the case of special immigrant ministers, the petitioner must also establish that the beneficiary had been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

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: . . .
>
> (B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

In order to establish that an alien is qualified as a minister of religion for the purpose of special immigrant classification, simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). A lay preacher is not eligible.

The petitioner states that the beneficiary is a licensed minister, has "full authorization to carry out all of the required responsibilities of leading and managing the worship and pastoral care," and has properly maintained and fulfilled all the requirements for this credential each year. The petitioner further states that the beneficiary has been serving as a full-time pastor of the Iglesia Evangelica Missionera de Lansing, Michigan, since June 4, 2001, and that he previously served in the Missionary Church, Inc. in the North Central District, South Bend, Indiana

In this case, the petitioner has not provided sufficient documentation to establish that the position offered qualifies as a "minister," as that term is defined in the regulation. There is no evidence that the beneficiary has any theological education or that the church requires a theological education in ordaining its ministers. 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).

Furthermore, there is no evidence in the record to establish that the beneficiary has ever been paid or supported by the petitioner or any other religious organization in either a religious vocation or occupation. The petitioner has made no claims that the beneficiary had been engaged solely as a minister of religion during the two-year period, or that he will be solely engaged as a minister with the petitioner.

Since the appeal will be dismissed for the reasons discussed, these issues need not be examined further.

In reviewing an immigrant visa petition, CIS must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the beneficiary in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of B. Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.