U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 1 4 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:

[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.

for Robert P. Wiemann, Director
Administrative Appeals Office

Discussion: The employment-based immigrant visa petition was denied by the Director, California 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 director of religious education at a monthly salary of $1,660. The director determined that the petitioner had not established that the proposed position qualifies as a religious occupation. On appeal, counsel for the petitioner submits a brief and additional documentation.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

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,
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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 in this matter is described as a church, affiliated with the Christian Church (Disciples of Christ) of the United States and Canada, having an active membership of 50 persons. The number and titles of the petitioner's full-time, salaried employees is not noted in the record.
The record reflects that beneficiary is a native and citizen of Korea who was last admitted to the United States as a nonimmigrant student (F-1) on January 10, 1995, with authorization to remain for the duration of her studies. The Form I-360, Petition for Amerasian, Widow or Special Immigrant, indicates that the beneficiary has not been employed in the United States without the permission of Citizenship and Immigration Services (CIS).

The sole issue raised by the director to be discussed in this proceeding is whether the petitioner has established that the proposed position qualifies as a religious occupation.

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

> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an "activity which relates to a traditional religious function." CIS interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination. CIS must consider each petition on its individual merits.

Upon submission of the petition, the petitioner submitted a letter from its pastor, Rev. Nam Soo Woo, dated February 5, 2002. Rev. Woo described the duties of the proposed position as:

> Plans, organizes and directs religious education programs for students in Sunday school and youth groups; teaches bible [sic] and Christian life and behavior; and oversees Sunday school recreation activities. Instructing persons seeking conversion to the faith, visiting sick persons and shut-ins; providing spiritual counsel to the needy and the bereaved.

In response to the director's request for additional information, counsel for the petitioner submitted a brief dated September 30, 2002. Counsel asserted that the proposed position qualifies as a religious occupation because it is one of "religious instruction," as categorized in the regulation at 8 C.F.R. § 204.5(m)(2).

Counsel provided no further explanation as how the duties of the position relate to a traditional religious function.

On appeal, counsel submits a brief dated January 16, 2003. Counsel reiterates that the regulations explicitly state that religious instruction is included in the definition of a religious occupation, and that the proposed position directly relates to religious instruction. Counsel concludes that, therefore, the proposed position is a religious occupation.

A review of the record reveals that the beneficiary graduated from the Department of Social Welfare of the Korean Christian College in Seoul, Korea, in February 1994. She subsequently transferred to the San Jose Christian College in San Jose, California, where she graduated with a Bachelor of Arts degree in Bible and Theology in May 1996. Since 1996, the petitioner states that the beneficiary has been performing services for the petitioner, in the proposed position, as director of religious education.

The petitioner has submitted photocopies of cancelled checks issued to the beneficiary, indicating that the petitioner paid the beneficiary a total $3,120 in 2000, and $1,200 in 2001. There is no evidence contained in the record that the beneficiary has been a permanent, full-time, salaried employee of the petitioner's for the two years preceding the filing date of the petition. In fact, the Form I-360 notes that the beneficiary has not been employed without CIS permission, and there is no evidence contained in the record that she received authorization to be employed by the petitioner on a permanent full-time, salaried basis.

The record includes a letter from the petitioner's parent organization indicating that the beneficiary is a "minister of gospel in good standing" with that organization. The parent organization also states that the beneficiary "will be compensated for her ministerial work by [the petitioner] and, in case of need, [the parent organization] will give financial assistance in support of her ministry."

Based on a review of the record, the AAO concludes that the petitioner has not submitted sufficient evidence to overcome the director's concerns. The record fails to adequately establish that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination. Although counsel asserts, on appeal, that the beneficiary has served in the capacity of a full-time salaried occupation for the past seven years, there is insufficient corroborative evidence contained in the record to support this assertion. Furthermore, although counsel asserts that the proposed position is a permanent, full-time salaried occupation "which will be fully supported by the denomination," there is insufficient corroborative evidence contained in the record to support this assertion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The standards required for performance of the duties of the proposed position and how the beneficiary has fulfilled those standards has not been satisfactorily explained. The petitioner has also not submitted a detailed description of the beneficiary's work schedule and the hours spent performing each of the described duties of the position.

For the reasons discussed, the proffered position is not a qualifying religious occupation. Therefore, the petition must be denied.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately proceeding the filing date of the petition.

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 March 27, 2002. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a religious vocation or occupation for the two-year period beginning on March 27, 2000.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. *See* H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he or she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963); *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he or she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who, in accordance with their vocation, live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and

religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To be otherwise would be outside the intent of Congress.

As previously indicated, the record does not contain sufficient evidence to establish that the beneficiary had been engaged in permanent, full-time salaried employment by the petitioner for the two years immediately preceding the filing date of the petition. Therefore, the petitioner has not satisfied the requirements of 8 C.F.R. § 204.5(m)(1).

The petitioner has also not submitted sufficient evidence to establish its ability to pay the beneficiary 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.

Here, the petitioner has submitted photocopies of bank statements for the period March 2002 through August 2002. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements that are current as of the date of filing the petition. Therefore, the petitioner has not satisfied the documentary requirements of 8 C.F.R. § 204.5(m)(4).

Since the appeal will be dismissed for the reason 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, that burden has not been met.

ORDER: The appeal is dismissed.