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

U.S. Citizenship and Immigration Services

FILE: [redacted] Office: CALIFORNIA 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:

[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 immigrant visa petition was denied by the Director, California Service Center, and an appeal of that decision was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the decision of the director to deny the petition will be affirmed.

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 an associate pastor. The director determined that the petitioner had not established its ability to pay the beneficiary the proffered wage. The director also determined that the petitioner had not established that it had extended a qualifying job offer to the beneficiary.

Counsel for the petitioner submitted a timely appeal of that decision, indicating that a brief would be submitted within thirty days of filing the appeal. As no brief was contained in the record of proceeding at the time the appeal was considered, the AAO summarily dismissed the appeal. On motion, counsel submits evidence that a brief and additional documentation was, in fact, submitted in support of the appeal. Therefore, the motion to reopen will be granted.

On motion, counsel asserts that Citizenship and Immigration Services (CIS) should accept the petitioner's actual payment of the beneficiary's proffered wage for a sustained period of time as clear evidence of its ability to pay. Counsel further asserts that CIS should also accept the petitioner's payments to the beneficiary, at a rate even higher than the proffered wage, as further evidence of its present, as well as future, ability to pay.

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 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.

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 to be addressed in this proceeding is whether the petitioner has established 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.

The petition was filed on April 24, 2000. Therefore, the petitioner must have established its ability to pay the beneficiary the proffered wage at that time.

The petitioner is described as a "full gospel non-denominational church" having "fifty-five (55) regular members, all of whom come from the ethnic group of Filipino ancestry." In support of the petition, however, the petitioner submitted a membership list indicating only forty-nine members. The petitioner has not explained this minor discrepancy.

The beneficiary is a native and citizen of the Philippines who was last admitted to the United States as a nonimmigrant visitor for pleasure (B-2) on April 6, 1994, with authorization to remain until October 5, 1994. The record reflects that the beneficiary has resided and worked in the United States unlawfully in the years following the expiration of his authorized period of admission in 1994.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, was signed by William Lau. The record reflects that Mr. Lau is both the petitioner's "Senior Pastor" and "President." The record includes the petitioner's Internal Revenue Service (IRS) Form 1023, Application for Recognition of Exemption Under

Section 501(c)(3) of the Internal Revenue Code, dated September 14, 2000. The form indicates that the petitioner's governing body includes: (President); the beneficiary (Vice President); the beneficiary's spouse (Secretary); and, Treasurer). The form is signed by the beneficiary and indicates that the petitioner has only one salaried employee who is compensated $500 monthly.

The initial evidence submitted in support of the petition includes a letter from dated March 30, 2000, indicating that the beneficiary "will continue to be compensated at his current rate of $1,000 per month." Also submitted were cancelled checks, issued by the petitioner jointly to the beneficiary and his spouse, in January 2000 (one check for $400) and February 2000 (three checks totaling $650).

In response to the director's request for additional evidence concerning the beneficiary's work history and the petitioner's payment, or other remuneration, to the beneficiary for his services, the petitioner submitted documentation including a proposed budget for the two-year period ending December 31, 2001, and a financial report for the month of August 2000. The proposed budget indicates a "Pastor's Allowance" of $6,000 in 2000, and $7,000 in 2001. The August 2000 financial report indicates a "Pastor Salary" of $1,300. The petitioner also submitted bank statements for August and September 2000, showing an average balance of $1,286.11.

Based on the evidence submitted, the director determined that the petitioner had not established its ability to pay the beneficiary the proffered wage. Specifically, the director stated:

> As mentioned . . . the proposed budget . . . includes, under Pastor's Allowance $6,000 (period ending 12/31/00) and $7,000 (period ending 12/31/01). [The director] finds that these totals are unrealistic since both pastors, including the beneficiary will be compensated less than $300.00 a month. The evidence of record does not show that the beneficiary will be compensated $1,000 as proclaimed in the petitioner's letter dated March 30, 2000.

On motion, counsel submits a letter from William Lau, dated February 15, 2002. Mr. Lau states:

> We are writing this letter to certify that our organization has the sufficient funds in order to pay [the beneficiary] the stated salary of $1,000 per month.
>
> We are able to certify this since we have already indeed between [sic] paying [the beneficiary] a minimum of $1,000 as his pastor's allowance. In fact, growth in our organization has resulted in our ability to raise [the beneficiary's] allowance to $1,300 in August 2001. [The beneficiary's] allowance was again raised to $1,700 per month in October 2001, and continues to the present date.
>
> We are hereby submitting monthly financial reports, bank statements, and copies of cancelled checks as evidence of our ongoing ability and commitment to pay [the beneficiary] the salary of $1,000.
>
> Additionally, this is to clarify that the financial reports setting forth the Pastor's Allowance refers entirely to the payment of [the beneficiary's] salary, and does not include any compensation to myself. Since 1999, I have spent considerable lengths of time in Taiwan at

> our sister organization, Consequently, my financial needs since that time have been and continue to be provided for by Christ Miracle Church, as well as my brother, [The beneficiary] will continue to be operating Pastor at [the petitioner's], and therefore our organization will continue to designate the pastor's allowance as his salary.

In support of the motion, counsel also submits documentation including: the petitioner's monthly un-audited financial reports, dated February 2000 through January 2002; copies of the petitioner's monthly bank statements, dated February 2000 through June 2001; and, copies of cancelled checks issued by the petitioner to the beneficiary, dated January 31, 2000 through December 13, 2001.

On motion, counsel cites an unpublished AAO decision as holding that the CIS should accept the petitioner's actual payment of the proffered wage for a sustained period of time as clear evidence of its ability to pay. The record does not contain copies of the decision, or its underlying petition and supporting documentation. If the petition was approved based on evidence that is similar to the evidence contained in this record of proceeding, however, the approval of the prior petition may have been erroneous. Further, the AAO is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). 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).

In this case, the petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements that would illustrate its assets and liabilities and permit a conclusive determination as to the petitioner's ability to pay the beneficiary the proffered wage as of April 24, 2000. Therefore, the petitioner has not satisfied the documentary requirements of 8 C.F.R. § 204.5(g)(2). For this reason, the petition must be denied.

Furthermore, as noted, there is a minor discrepancy in the number of the petitioner's members. There are also, more importantly, discrepancies concerning the number of the petitioner's employees, who those employees are, and specifically how they have each been remunerated prior to and following the filing date of the petition. As previously discussed, the petitioner's IRS Form 1023, dated September 14, 2000, indicates that the petitioner has only one employee, who is paid $500 per month. However, in his letter of February 15, 2002, indicates that he has not received compensation from the petitioning organization since September 1999. Also, cancelled checks issued by the petitioner in January and February 2000, indicate that the beneficiary and his spouse were jointly paid a total of $1050 for the services they performed during that eight-week period. Finally, letter of February 15, 2002, indicates that the beneficiary received a total salary of $15,300 ($1000 monthly from January through July; $1,300 monthly from August through September; and $1,700 monthly from October through December) in 2001. The petitioner's 2001 budget, however, indicates a "Pastor's Allowance" of only $7,000 for that year.

The above-noted discrepancies have not been explained satisfactorily, and call into question the petitioner's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies,

absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The second issue to be addressed in this proceeding is whether the petitioner has established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In his letter of March 30, 2000, [redacted] states:

> For the beneficiary's services, he will be compensated at his current rate of $1000 per month. [The beneficiary] will also be provided medical insurance unless he chooses either an alternative method of compensation or declines coverage. [The petitioner] will further provide costs for business related expenses, such as continuing education.

The petitioner has not addressed the issue of whether the beneficiary would require supplemental employment or be dependent on the solicitation of funds for his support. Therefore, the petitioner has not established that it has extended a qualifying job offer to the beneficiary.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that the proposed position qualifies as a religious vocation or occupation, and that the beneficiary is qualified to engage in a religious vocation or occupation. As 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 alien in the manner stated. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of 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.