U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a minister.

The director denied the petition finding that the petitioner failed to establish that the beneficiary's duties and proposed position require specific religious training or a full-time commitment. The director also found that the petitioner failed to establish that the beneficiary will be employed in a traditional religious occupation. Finally, the director determined that the petitioner failed to establish the ability to pay the beneficiary and failed to establish its tax-exempt status with the Internal Revenue Service (IRS).

On appeal, the petitioner submits a letter and additional evidence.

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, 2003, 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, 2003, 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 beneficiary in this matter is described as a native and citizen of the Dominican Republic who last entered the United States on November 30, 2001, as a B-2 nonimmigrant.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy several eligibility requirements, including that it is a qualifying religious organization as defined in this type of visa petition proceeding.

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:

(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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

In his decision the director noted that the petitioner had failed to demonstrate that it qualifies as a nonprofit organization. On appeal, the petitioner submits a letter that states:

> [Its] council was incorporated under the laws of the State Department of Puerto Rico . . . as a nonprofit religious organization, and therefore has been performing as such for over 50 years. We also secured an Employer Identification Number from the Internal Revenue Service [IRS].
>
> * * *
>
> Regretfully, even though we have contacted the IRS to obtain said documentation and have been assured that we will have no problem getting a Determination Letter from them, this is a lengthy process and 30 days are not enough.

Incorporation under the laws of Puerto Rico and the obtainment of an employer identification number from the IRS does not establish that the petitioner is exempt or eligible for exemption from taxation under section 501(c)(3) of the Internal Revenue Code. Further, even if the petitioner were to receive documentation from the IRS at this point in the proceedings, such evidence does not demonstrate that the petitioner was qualified at the time of filing. The petitioner must establish eligibility at the time of filing the immigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

A petitioner also must establish that the beneficiary is qualified as a minister as defined by regulation.

The regulation at 8 C.F.R. § 204.5(m)(2) defines a minister as:

> [A]n 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.

Further, 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:

> (A) 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; and
>
> (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.

The record contains a "Certificate of Exhorter" dated January 25, 1992, issued by the Board of Directors of the Pentecostal Council Ebenezer and a diploma in Theological studies from the Assembly of Christian Churches Emmanuel. The record also contains an identification card issued by Central Temple Church indicating the beneficiary is a licensed preacher and an identification card issued by Central Church Emmanuel indicating the beneficiary is an ordained minister. Additionally, the record contains a letter from Church Central, the Assembly of Christian Churches Emmanuel indicating that the beneficiary is a "member in communion" and an "ordained minister."

We find that as the beneficiary completed three years of theological study at the petitioner's seminary prior to being a candidate for the ordained ministry, evidence that the beneficiary received a diploma from the seminary satisfactorily establishes that the beneficiary is qualified as a minister for the purpose of special immigrant classification.

However, a petitioner also must establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

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.

In the case of special immigrant ministers, the alien must have 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 petition was filed on May 8, 2002. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the work of a minister since at least May 8, 2000. The petitioner, in its letter submitted on appeal states that the beneficiary's diploma, certificate of exhorter, and credentials are all evidence that the beneficiary was employed for the two years immediately preceding the filing of the petition. The petitioner also provides a translation of a letter from its sister church, Asamblea Evangelica Pentecostal Emmanuel, Inc. which states:

> We hereby certify that [the petitioner] . . . is a member in communion of this [church] since 1990 and his testimony of Christian life as prescribed by the Bible has been satisfactory.
>
> We also certify that [the beneficiary] is an active Ordained Minister.

We do not find that such evidence establishes that the beneficiary had actually been actively performing the work of a minister. The evidence fails to indicate that the beneficiary was continuously carrying on the duties traditionally ascribed to a minister of religion, such as weddings, funeral services, baptisms, etc. The letter does not contain any details listing the beneficiary's duties as a minister. Moreover, we agree with the determination made by the director that as the petitioner failed to provide any evidence that the beneficiary had been paid for his services as a minister, the petitioner failed to establish that the beneficiary has the required two years of continuous experience in the religious occupation.

The statute and its implementing regulations require that a beneficiary has been continuously carrying on the religious occupation specified in the petition for the two years immediately preceding filing. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, Citizenship and Immigration Services (CIS) interprets its own regulations to require that the prior experience must have been full-time salaried employment in order to qualify.

The legislative history of the religious worker provision of the Immigration Act of 1990[1] states that a substantial amount of case 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).

In *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com. 1963), the Commissioner determined that if the beneficiary were to receive no salary for church work, he would be required to earn a living by obtaining other employment. In analogous reasoning, CIS determines that unpaid experience does not qualify as the beneficiary must have sought outside employment to support himself. Further, without income tax returns and W-2's, CIS is unable to determine how and whether the beneficiary has been employed.

Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating evidence such as certified tax documents, CIS is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

Furthermore, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period or that he would be solely engaged as a minister with the petitioning church. For this reason as well, the petition may not be approved.

As determined by the director, the next issue to be determined is whether the petitioner established its ability to pay the beneficiary.

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.

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[1] Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990).

On appeal, the petitioner provides an untranslated copy of its checking account and Inversion account dated November 30, 2002 to December 31, 2002 to support its claimed ability to pay the beneficiary's "housing, transportation and medical insurance, in addition to two hundred dollars cash." 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 to the present. Therefore, the petitioner has not satisfied the documentary requirement. For this reason as well, the petition may not be approved.

In review, the petitioner has failed to overcome the director's objection to approving the petition.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS' purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall,* 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The petitioner bears the burden to establish eligibility for the benefit sought. In reviewing an immigrant visa petition, CIS must consider the extent of documentation 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, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.