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: 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 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 employ him as a music director at a monthly salary of $1,510. The director determined that the petitioner had not established that the proposed position qualifies as a religious occupation. The director further determined that the petitioner had not established that a qualifying job offer has been extended to the beneficiary.

On appeal, counsel for the petitioner submits a brief.

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 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." Citizenship and Immigration Services (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.

The job title alone is not, and cannot be, the determining factor in whether a position qualifies as a religious occupation. CIS must consider each petition on its individual merits.

The petitioner in this matter is described as a Presbyterian church having a congregation of 250 members. There is no information contained in the record indicating the number and titles of the petitioner's full-time, salaried employees.

The record reflects that the beneficiary is a native and citizen of Korea who was last admitted to the United States as a nonimmigrant religious worker (R-1) on August 22, 1998, with authorization to remain until September 28, 2003. Documentation contained in the record reflects that the beneficiary earned a Bachelor of Arts degree in Religious Music f[redacted] in South Korea in August 1987, and a Master of Music degree in Composition from Yeungnam University in South Korea in August 1991. The beneficiary also pursued post-graduate work at the [redacted] in Warsaw, Poland, from December 1993 to August 1995. From April 1997 through September 1998, the beneficiary served as a "Choir Director (Music Director)" at the S[redacted]n South Korea, and from October 1998 through October 1999, he served as a "Director of Choir and Music" at the San Jose Presbyterian Church in San Jose, California.

In a letter dated April 1, 2001, the petitioner's pastor, Rev. Myong Bae Choi, states that the beneficiary has served the petitioner as a music director since November 7, 1999. Rev. Choi describes the duties of the beneficiary's position as follows:

> Plans, organizes and directs church music program. Oversees music programs for Sunday school and youth groups. Teaches, leads and directs church choir and actual performances. Plans, organizes and directs annual concerts for the church.

The petitioner has submitted photocopies of cancelled checks issued to the beneficiary, indicating that the petitioner paid the beneficiary $1,000 monthly from November 1999 through December 2000, and $1,510 monthly from January 2001 through June 2002.

A review of the record reflects that the petitioner has adequately established the beneficiary's qualifications as a music director, and that he has been remunerated as a music director from November 1999 through to the date of filing the petition. However, the petitioner has not submitted sufficient evidence to establish that the proposed position is traditional religious function within the petitioner's Presbyterian denomination. There is no evidence contained in the record indicating that the duties of the position are directly related to the religious creed or beliefs of the Presbyterian denomination, that the position is defined and recognized by the governing body of the Presbyterian denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the Presbyterian denomination. For this reason, the petition must be denied.

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

The regulation at 8 C.F.R. § 204.5(m)(4) states:

> *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 a letter dated April 1, 2001, the petitioner's pastor [redacted] states that the beneficiary "will be paid $1,510.00 per month for his services." The petitioner has not clearly indicated that the beneficiary will not be solely dependent on supplemental employment or the solicitation of funds for support. Therefore, the petitioner has not satisfied the documentary requirements of 8 C.F.R. § 204.5(m)(4). For this additional reason, the petition must be denied.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that: (1) the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the 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 April 12, 2001. 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 April 12, 1999.

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.

The record reflects that the beneficiary was paid by the petitioner for full-time services as a music director from November 1999 through to the date the petition was filed. However, there is evidence contained in the record of the beneficiary's remuneration as a full-time, salaried employee from April 1, 1999 through November 1999. Based on the above discussion and a review of the evidence presented, 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 dated October 30, 1999 through June 28, 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 additional grounds for denial of the petition 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.