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:

[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.

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 regional director of marriage ministries. The director determined that the petitioner had not established that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

On appeal, counsel for the petitioner submits a brief and additional documentation. Counsel asserts that the statute which governs religious workers does not mandate "full-time salaried employment" as the sole qualifying experience for approval of a religious worker petition.

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.

The record reflects that the beneficiary is a native and citizen of Peru who was last admitted to the United States as a nonimmigrant visitor for pleasure (B-2) on May 2, 2001, with authorization to remain until November 1, 2001. Part 4 of 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).

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements. The sole issue raised by the director to be addressed in this proceeding is whether the petitioner has established that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding 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 September 21, 2001. Therefore, the petitioner must establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for the two-year period beginning on September 21, 1999.

In response to the director's request for additional information concerning the beneficiary's work experience, the petitioner provided documentation, including the following:

- A letter, dated November 1, 2002, from Michael and [redacted] the founders and directors of Marriage Ministries International, an organization that they indicate is headquartered in Denver, Colorado. [redacted] state, in part, that:

  > We count [the beneficiary and his spouse] as leaders for our ministry. They started their volunteer work in [redacted] on [sic] February 1999. They continued until February 26, 2001. On this date they moved to Cleveland, Ohio, starting their work in the ministry on March 1st, 2001 to this date. As mentioned before, [the beneficiary and his spouse] have done all their work for the ministry in a voluntary manner.

- A letter, dated December 2, 2002, from the petitioner's pastor, [redacted] states, in part, that: ". . . The work in ministries is voluntary by nature and it is critical to the lifeblood of our church. . . . The fact that [the beneficiary] was not compensated in Peru for his ministry work is the rule in our denomination rather than the exception. . . ."

- A letter, dated December 2, 2002, from Gerardo Aponte, a missionary in Peru. [redacted] states that the beneficiary assisted matrimonial couples on an "ad-honorem" basis from 1991 through 2001.

On appeal, counsel for the petitioner states:

> We are filing this appeal because we do not agree with the [Citizenship and Immigration Service's (CIS)] analysis which claims that the beneficiary did not have 2 years of continuous experience in the ministry prior to coming to the United States. The [CIS} has made no effort to fairly evaluate the evidence which pertains to our religious denomination and the unique marriage ministry our church is establishing to fight the deterioration of the Hispanic family in our inner cities.

Counsel concludes:

> With the advent of the Bush's administration's new policy for faith-based initiatives for the resolution of pressing social problems, the [CIS] must bring its adjudication of religious worker petitions in line with the stated objectives of the government. Thus, the petitioner's efforts to strengthen the family structure of the Hispanic community by providing a comprehensive Marriage Ministry as an outreach program is completely in keeping with the Administration's vision for a grass roots attack on the evils that plague the very fabric of our society. Therefore, the Petitioner respectfully requests that its petition be approved so that the beneficiary can set up the marriage ministries and conduct training for group leaders within the region and can help the Pentecostal church in preserving and growing marriages within the Hispanic church congregation and the Hispanic community at large.

The legislative history of the religious worker provision of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (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 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 proceeding 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).

The term "continuously" is also 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 studies. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

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) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

In line with these past decisions and the intent of Congress, it is clear, therefore, 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 petitioner has made no claim, and submitted no evidence, to establish that the beneficiary has been employed in full-time, salaried work in a religious vocation or occupation from September 21, 1999 through to the date of filing the petition on September 21, 2001. Furthermore, the petitioner has not provided a detailed description and evidence of the beneficiary's means of financial support in this country. Based on the above discussion, and absent a detailed description of the beneficiary's employment history and source of financial support in the United States, supported by corroborating evidence such as certified tax documents, the AAO is unable to conclude that the beneficiary had been continuously engaged in a religious vocation or occupation throughout the two-year qualifying period. For this reason, the petition must be denied.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that: (1) the proposed position qualifies as a religious vocation or occupation; (2) the beneficiary is qualified to engage in a qualifying religious vocation or occupation; (3) the petitioner has the ability to pay the beneficiary the proffered wage; and, (4) a qualifying job offer has been extended to the beneficiary. As the appeal will be dismissed for the reason discussed, these issues need not be examined further.

While the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with 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).

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).

In visa petition proceedings, the burden of proof remains entirely 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.