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: TEXAS SERVICE CENTER Date: JAN 1 8 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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an "inter-denominational Christian organization." It seeks to classify 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), to perform services as a missionary. The director also determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that it had extended a valid job offer to the beneficiary. The petitioner's motion to reopen and reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

On appeal, counsel 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 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)(3)(i) states, in pertinent part:

> (3) *Initial evidence.* Unless otherwise specified, 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases,

evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

With the petition, the petitioner submitted a copy of a July 3, 1984 letter to the Bible Alliance Mission, Inc. in which the IRS granted tax exempt status to that organization as a foundation and publicly supported organization described in § 509(a)(1) and 170(b)(1)(A)(vi) of § 501(c)(3) of the Internal Revenue Code (IRC). The letter indicated that the primary activities of the Bible Alliance Mission, Inc. was the distribution of religious materials to non-readers, schools and prisons. The evidence submitted by the petitioner indicates that the Bible Alliance Mission, Inc. is a subsidiary of the petitioner. There is no evidence that the petitioner was covered under the tax-exempt status granted to its subordinate organization.

In response to the director's Notice of Intent to Deny dated March 17, 2003, the petitioner submitted an "expert opinion" from a Certified Public Accountant (CPA), who opined that the petitioner was a church as described in § 509(a)(1) and § 170(b)(1)(A)(i) of the IRC. The petitioner also submitted a copy of Schedule A of the IRS Form 1023, which was apparently completed for the purpose of the CPA's evaluation. Also included in the record is a State of Florida exemption certificate for sales and use tax.

Absent a letter from the IRS granting tax-exempt status as a religious organization, the regulation requires the petitioner to submit "such documentation" as is required by the IRS to establish eligibility for tax exemption as it relates to religious organizations. The petitioner did not submit a completed copy of the Form 1023, to include the financial statements of the organization for the last four years in a Statement of Revenue and Expenses. The petitioner also failed to include the organizing instrument of the organization. The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B), and fail to substantiate the petitioner's claim as a bona fide religious organization.

The regulation at 8 C.F.R. § 204.5(m)(1), which echoes the statutory language, states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. 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 regulation indicates that the "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 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.

The petition was filed on November 16, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a missionary throughout the two-year period immediately preceding that date.

The petitioner stated that the beneficiary has served as a religious worker and representative of the organization since October 6, 1999. It states that the beneficiary's duties include, among other things, "missionary outreach, church planting, evangelism, discipleship, [and] missionary programs for all ages." The petitioner submitted a document labeled "Aurora Mission, Inc.-Historical Transaction Detail by Account," which reflects that the beneficiary has received monthly sums from the petitioner since October 6, 1999. These sums range in amount from $80.00 to $920.00, and are annotated as being for specific projects such as "Focus 2000" or for expenses or "missionary help." One payment in May of 2000 indicates it is for salary and reimbursement of expenses. The petitioner also submitted copies of some checks made payable to the beneficiary that reflect the amounts indicated in the historical account. The checks do not reflect money paid prior to September 26, 2001.

The director determined that the evidence was insufficient to substantiate that the beneficiary worked continuously in a qualifying religious occupation during the two years immediately preceding the filing of the visa petition.

On appeal, counsel asserts that the evidence submitted by the petitioner, including a letter from the petitioner's president and executive director and the financial documentation, establish that the beneficiary has been continuously employed as a missionary during the requisite two-year period.

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, with the addition of "a number of safeguards . . . to prevent abuse." 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/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/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).

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, 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/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 hold otherwise would be contrary to the intent of Congress.

The petitioner indicates that it paid the beneficiary $600 per month from October 1999 to October 2000 for work on "Focus 2000." From November 2000 to November 2001, the petitioner indicates it paid the beneficiary in varying amounts (generally $600 monthly) for "mission help" or for expenses. It is not clear from the petitioner's evidence that the beneficiary was engaged in full time, salaried employment with the petitioner during this two-year period. There is no clear evidence of the hours the beneficiary worked, or his role as the petitioner's representative with the Chiesa Biblica Cristiana. The record does not clearly establish that the beneficiary was not engaged in other secular employment in order to support himself during the requisite two-year period.

The petitioner must also demonstrate that a qualifying job offer has been tendered. 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.

The director determined that the petitioner had not submitted evidence that the petitioner's governing body had prescribed religious training for the proffered job or that the beneficiary possessed the required training. The director also determined that the petitioner had not submitted a "clear and detailed statement" as to the terms and nature of the proffered position.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. As noted by counsel, the

statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Service performed in such positions would reasonably be expected to be directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed 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 petitioner states that it is a nondenominational organization that was established in 1978. In its list of employees, the petitioner lists seven salaried missionary positions in addition to that occupied by the beneficiary, and two missionary trainees. The position of missionary appears to have existed since the establishment of the organization. The record also contains a statement from the petitioner that details the job responsibilities of the position.

While the petitioner has failed to establish that it is a qualified religious organization and or that it has the ability to pay the proffered salary (as discussed below), the evidence is sufficient to indicate that it has tendered a qualifying job offer.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the proffered salary. This deficiency constitutes an additional ground for dismissal.

Another issue pertains to the regulation at 8 C.F.R. § 204.5(g)(2), which states in pertinent part:

> *Ability of prospective employer to pay wage.* 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicates that it will pay the beneficiary a salary of $2,000 per month. The petitioner submitted evidence that it paid the beneficiary a maximum of $920.00 per month (in 2003). The petitioner also submitted a brokerage statement for the period ending February 2003, which shows a balance of $76,723.31. The evidence submitted also includes two documents labeled "Statements of Activities," and reflect changes in net assets from the year 1999 to 2000, and from 2000 to 2001. These documents appear to be a part of larger documents, which were not submitted.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. Although the net assets as reported by the petitioner exceed one million dollars, the petitioner does not provide evidence of what constitutes its net assets and whether these assets are current or long term, which may affect the petitioner's ability to pay the proffered salary. The petitioner indicates that it receives an annual commitment of $200,000 from a foundation, which will increase the commitment upon request. However, the petitioner submitted no evidence of the support provided by this foundation. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.