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 17 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 employment-based 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 Form I-360, Petition for Amerasian, Widow or Special Immigrant, was filed on June 21, 2002. The petitioner 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), in order to perform services as an auxiliary pastor at a monthly salary of $1,400 in addition to housing, transportation and medical insurance.

The director denied the petition in a decision dated February 26, 2003. The director determined that the petitioner had not established that the beneficiary is qualified to engage in a religious occupation or vocation, and had not established that the beneficiary had been continuously engaged in a qualifying religious occupation or vocation for two years immediately preceding the filing date of the petition.

Counsel for the petitioner filed the Form I-290B, Notice of Appeal, on March 28, 2003. On appeal, counsel submits a brief asserting that the beneficiary's duties are more similar to those of a pastoral assistant than those of an ordained pastor and that the beneficiary qualifies as a religious worker. Counsel further asserts that the petitioner has submitted sufficient evidence to establish that the beneficiary had been performing religious duties as an auxiliary pastor since June 21, 2000.

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;
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> (ii) seeks to enter the United States--
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> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> (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
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> (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
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> (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.

Part 1 of the Form I-360 indicates that the petitioner in this matter is a church located in Los Angeles, California. There is no information contained in the record showing the number and titles of its employees, both secular and religious, and the size of its congregation.

The record reflects that the beneficiary is a native of Brazil who was last admitted to the United States as a nonimmigrant religious worker (R-1) on May 18, 1998, with authorization to remain until May 18, 2003.

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 beneficiary is qualified to engage in a religious occupation or vocation.

The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

> *Minister* means an 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.
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> *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 relating 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 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 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:
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> (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
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> (B) That, of 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, or, . . .
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> (D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

The Form I-360 indicates that the petitioner's authorizing official is treasurer, In a letter dated June 7, 2002, stated that the beneficiary has the following duties: perform religious services on a regular basis; organize volunteers into different groups to assist the church in its many charitable functions; visit parishioners at their homes, hospitals, and prisons to counsel and advise them on the teachings of the church and their personal problems; perform religious services on both radio and television; be in charge of outreach programs to attract new members; and, teach and preach the gospel.

In response to the director's request for additional information and evidence in support of the petition, the petitioner submitted a letter, dated January 20, 2003, from who is also identified as the petitioner's treasurer,[1] amending the previously described duties. stated that the beneficiary: performs religious services on a regular basis; *assists* in organizing volunteers into various groups to assist the church in its many charitable functions; visits parishioners at their homes, hospitals, and prisons to counsel and advise them on the teachings of the church and their personal problems; *if, required, assists in* performing religious services on both radio and television; is in charge of outreach to attract new members; *assists in officiating funerals*; and *assists in* teaching a preaching the gospel. [Emphasis supplied concerning amendments in duties from the previous letter.]

The petitioner has further asserted that the beneficiary was made an auxiliary pastor of The Universal Church in Brazil in May 1996. In support, the petitioner submitted an undated certificate indicating that the beneficiary has performed services for the petitioner as an auxiliary pastor, and has been a member of the petitioner's religious denomination for more than two years.

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[1] As the signatures are similar in both letters, it appears that Regina Cerviera and Regina Da Silva are one and the same person, the petitioner's treasurer, who apparently changed her last name at some point between June 7, 2002 and January 20, 2003.

In denying the petition, the director concluded that the petitioner had submitted evidence to establish that the beneficiary had been a member of the petitioner's religious denomination for two years immediately preceding the filing date of the petition. The director further determined, however, that the petitioner had not submitted sufficient evidence to establish that the beneficiary had been ordained as a minister.

On appeal, counsel asserts that the duties of the position are more analogous to those of a pastoral assistant, as described by the Department of Labor (DOL) in the Directory of Occupation Titles, than those of a minister.

A review of the record reveals discrepancies pertaining to the duties of the proposed position. In its June 7, 2002 letter, the petitioner stated that the beneficiary "performs religious services" and "teaches and preaches the gospel." In its January 20, 2003 letter, the petitioner stated that the beneficiary both performs religious services and *assists in* performing religious services. The petitioner further stated in its January 20, 2003 letter that the beneficiary *assists in* officiating at funerals and *assists in* teaching and preaching the gospel.

These discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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).

Many of the duties of this particular position appear to be activities that are normally performed by lay preachers, or activities that would normally be performed by a caring and active member of the congregation. For example, lay preachers lead congregations in worship, preach and read the Bible at services, teach Bible study, visit the sick and elderly, and provide spiritual counseling to members of the congregation. However, the regulations specifically preclude lay ministers from classification as special immigrant religious workers. Furthermore, the petitioner has not established that the position qualifies as a religious occupation. The petitioner has not submitted evidence to establish that the activities of the proposed position are 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 has also not provided a specific breakdown as to the hours the beneficiary is to be engaged in each of the listed duties of the proposed position.

Here, the petitioner has submitted documentation indicating that the beneficiary has performed services as an auxiliary pastor. However, the petitioner has not submitted any evidence to establish the beneficiary's qualifications to perform those services, other than documentation establishing the beneficiary's membership in the denomination. Based on the evidence submitted, the AAO concludes that the petitioner has failed to submit sufficient evidence to establish that the beneficiary is qualified to engage in a religious occupation. For this reason, the petition must be denied.

The second issue raised by the director to be addressed is whether the petitioner has established that the beneficiary had been continuously engaged in a qualifying religious occupation or vocation for two years immediately preceding the filing date of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states:

> 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.

Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two-year period beginning on June 21, 2000.

In addressing this requirement, the petitioner has submitted copies of the beneficiary's Forms W-2, Wage and Tax Statements, reflecting the following:

> 1998 W-2: The beneficiary, whose address is shown as Vistas del Rio, Apt. 25-C, Bayamon, Puerto Rico, received $7,000 in wages from The Universal Church, 47 4th Avenue, Brooklyn, New York.
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> 1999 W-2: The beneficiary, whose address is shown as 18449 Kittridge, Reseda, California, received $16,800 in wages from The Universal Church, 220 East 23rd Street, Suite 509, New York, New York.
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> 2001 W-2: The beneficiary, whose address is shown as 703 S. Broadway, Los Angeles, California (the same address as the petitioner), received wages of $14,808.80 from The Universal Church, 220 East 23rd Street, Suite 509, New York, New York.

There is no evidence contained in the record concerning the beneficiary's remuneration for services performed in 2000.

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.

A review of the record reveals that the petitioner has not submitted sufficient evidence to establish that the beneficiary had been continuously engaged in a qualifying religious occupation or vocation for the entire two-year period from June 21, 2000 through June 21, 2002. For this reason as well, the petition must be denied.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that it is a bona fide non-profit religious organization. The petitioner submitted a letter from the Internal Revenue Service (IRS), with an illegible date, indicating that The Universal Church, 56 Second Avenue, New York, New York, has been recognized as tax-exempt under section 501(c)(3) of the Internal Revenue Code (IRC). The petitioner has also submitted listings of that organization's alleged locations throughout the United States and Puerto Rico. However, the petitioner has not submitted a published directory of The Universal Church in New York showing that the petitioner is officially affiliated with that organization. Furthermore, and more importantly, there is no evidence that any subordinates of The Universal Church in New York are included in its tax-exempt recognition. Since the appeal will be dismissed for the reasons discussed, this issue 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, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.