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: JUN 1 7 2004

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

PETITION: Immigrant 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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a health and wellness coordinator for missionary services. The director determined that the petitioner had not established (1) that the beneficiary worked in a qualifying religious occupation; (2) that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition; (3) its ability to pay the beneficiary's salary; (4) its status as a qualifying tax-exempt religious organization; or (5) the purpose of the beneficiary's original entry into the United States.

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 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) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an 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."

8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate 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 March 21, 2001. Therefore, the petitioner must establish that the beneficiary was continuously

performing the duties of as a health and wellness coordinator for missionary services throughout the two years immediately prior to that date.

The director's findings regarding the beneficiary's occupation and experience are somewhat interrelated, because, for instance, if the beneficiary's past work was not in a qualifying occupation, then she cannot have the required two years of experience in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following relevant definitions:

> 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.
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> Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

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. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) 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. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services 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.

A job offer letter to the beneficiary from who was then the "Hispanic pastor" of the petitioning church (he has since been promoted and replaced), contains the following description of the position of "Health and Wellness Coordinator for our Missionary Services": "Your duties will be to meet on [a] weekly basis with our parishioners and all those in need of health, cleanliness, prevention and family planning." A separate letter from addressed to immigration authorities, states that the beneficiary's "duties have been that of a Missionary for the Spanish Community, counseling the members in body hygiene, family planning, health and nutrition as well as parental responsibilities to young unwed mothers." Neither letter discusses terms of payment, hours worked per week, or other details typically associated with a job offer.

The petitioner has submitted copies of documents establishing the beneficiary's medical training, but these documents do not demonstrate that the United Methodist Church considers health and hygiene counseling to be a traditional religious function. The certificates generally appear to be from secular institutions.

The petitioner's documentation does not establish the beneficiary's prior work history. states that the beneficiary "has been affiliated with our church since August 29, 1998," but the record shows that this affiliation was not continuous. The beneficiary's passport shows several trips outside the United States. She arrived in the United States on August 24, 1998, shortly before she is said to have begun her association with the petitioner, but the passport also shows that the beneficiary returned to Venezuela on September 14, 1998. Her next entry into the United States was on August 22, 1999, but she was back in Venezuela on September 2, 1999. She again left Venezuela for the United States on February 19, 2000, her last documented international travel. The timing of this travel does not indicate that these were brief vacations outside of the United States. Rather, between 1998 and early 2000, the beneficiary seems to have spent the bulk of her time in Venezuela, with only occasional visits to the United States, each of a few weeks' duration.

The director instructed the petitioner to provide evidence that the beneficiary worked in a full-time, salaried position, performing the same duties as the job offered, throughout the two-year qualifying period from March 1999 to March 2001. The director also expressed doubt that the position, as described, constitutes qualifying religious employment, and instructed the petitioner to provide additional details about the proposed employment.

In response, the petitioner has submitted a letter from officials of the *Organización Cristiana Evangélica de Asesoramiento y Servicio* (OCEAS), Maracaibo, Venezuela. The individuals assert that the beneficiary "worked as the director of medical services for our church . . . from June 1, 1997 to March 17, 2000," performing "duties such as Consultant Coordinator of Family Practice, Pediatrics, Gynecology, as well as psychological orientation for the spiritual and faith needs of families in the community." The beneficiary's "monthly salary was 400,000.00 Bolivars" (on appeal, the petitioner indicates that this amount is equal to $800.00). The letter does not indicate whether the beneficiary worked part time or full time.

the new Hispanic pastor of the petitioning church, states in a new letter that the beneficiary "will earn $1,000.00 monthly" and "will be required to work approximately forty hours a week." He asserts that the beneficiary "has been coming continuously from Venezuela to help with the needs of our church," although, as noted above, her passport shows that she visited the United States only twice between August 1998 and February 2000, spending a total of four and a half weeks in the country during that 18-month period.

The director, in denying the petition, stated that the petitioner has not established that health and hygiene counseling are traditional religious duties within the petitioning denomination. Furthermore, because the petitioner has not shown that the beneficiary's past work was of a religious nature, the director determined that the beneficiary's past work does not satisfy the two-year experience requirement. The director also asserted that unpaid volunteer work is not qualifying experience.

On appeal, maintains that, while the beneficiary has received no salary in the United States, "[t]he church has been supporting her with meals, transportation and lodgings." does not dispute the director's finding that the beneficiary's work is not a religious occupation. Rather, he asserts that the beneficiary "has a religious vocation with a calling to religious life, evidenced by the demonstration of a lifelong commitment." This language is taken directly from the regulatory definition of "religious vocation" at 8 C.F.R. § 204.5(m)(2). The petitioner does not document any formal "demonstration of a lifelong commitment," such as the permanent vows taken by nuns and monks. The beneficiary's personal sense of religious devotion does not constitute a demonstrated commitment.

The beneficiary's duties are inherently secular, more related to her medical training than to her church membership. The petitioner has not shown that the beneficiary's work in health and hygiene counseling represents a traditional religious duty, for which the United Methodist Church routinely engages full-time, salaried employees. The Board of Immigration Appeals found, in a 1978 precedent decision, that simply declaring an alien to be an ordained minister did not qualify that alien for immigration benefits as a minister. *See Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). By the same reasoning, pervasively secular work does not become a qualifying religious occupation simply because a church attaches the job title "missionary" to that work.

Further, while the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), 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, supra.*

Without evidence that the beneficiary's work represents a traditional religious function, and thus a religious occupation, we cannot find that the beneficiary worked continuously in a qualifying religious occupation during the two-year period immediately preceding the petition's filing date. Even if the occupation qualified, the information provided regarding that period is not sufficient to support the conclusion that the beneficiary continuously performed the duties of that occupation throughout the two-year period.

The next issue concerns the petitioner's ability to pay the beneficiary's salary. The regulation at 8 C.F.R. § 204.5(g)(2) states:

> *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. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service [now Citizenship and Immigration Services].

We note that, in the initial filing, the petitioner did not specify what it intends to pay the beneficiary. It is, to say the least, difficult to determine the petitioner's ability to pay the beneficiary's salary, when the petitioner does not even disclose what that salary will be. As noted above, the petitioner later indicated that the beneficiary would earn $1,000.00 per month.

The petitioner's initial submission includes a copy of the petitioner's "Multi Cultural Training Center Project Budget." This undated document shows what the petitioner intends to spend on the project, but it does not demonstrate that the budgeted funds are, in fact, available. The budget lists salaries for the pastor, a computer assistant, a secretary, and the project director, as well as expense stipends for volunteer teachers, but there are no funds allocated for a missionary or a health and wellness coordinator.

The petitioner has also submitted two monthly "Income and Expense Basic Reports" from August and December 2000. The latter report indicates year-to-date revenues of $41,138.96 and expenditures of $51,846.87, such that the petitioner's expenses exceeded its income by more than ten thousand dollars. It appears that these figures apply only to the petitioner's Hispanic program. The materials submitted offer no complete financial picture of the petitioning entity.

The director instructed the petitioner to "[s]ubmit conclusive evidence that will prove that the organization has the ability to support the [beneficiary]." In response, the petitioner has submitted another copy of the above project budget, and a letter from indicating that the petitioner "confirms that it has sufficient economic resources for the employment offer."

The director was not obliged to accept assurance of the petitioner's ability to pay as acceptable evidence, because, according to the regulation, the director may accept such a statement only in instances where the prospective employer employs 100 or more workers. Such is not the case here; asserts that the petitioner "has currently only one paid salaried position which is given to the pastor. There are 15 volunteers providing services." He adds that the petitioner "currently sponsors five religious workers," including the beneficiary. This indicates that, in order for these job offers to be valid and *bona fide*, the petitioner must demonstrate sufficient resources to pay all five alien beneficiaries.

The director, in the denial notice, stated that the petitioner had failed to submit adequate financial documentation to establish its ability to pay the proffered salary to the beneficiary. On appeal, the petitioner submits a copy of the 2003 budget for its Hispanic Mission. This budget reflects no salary payments except for the pastor. While the petitioner indicates that it has filed petitions for five religious workers, the budget does not demonstrate that the petitioner has set aside any funds to pay them.

The petitioner also submits copies of bank statements, all showing monthly balances between $5,000 and $7,000. These statements do not establish that the petitioner had sufficient cash on hand to pay the beneficiary $1,000 per month *and* has sufficient income to replenish those funds. A bank balance of $7,000 would be exhausted after seven months of the beneficiary's salary payments.

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 bank statements and 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. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The next issue concerns the petitioner's tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit 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 (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
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> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

An October 16, 1974 letter from the Internal Revenue Service conveys a group exemption on "the United and Its Affiliated Organizations." The letter indicates that "affiliated religious organizations include . . . Local Churches and Agencies," and instructs the church to provide an annually updated list of entities included under the group exemption.

The director requested evidence to establish that the petitioner is covered by the 1974 group exemption. In response, the petitioner has submitted another copy of the 1974 exemption letter, but nothing to show that the parent organization named in that letter has recognized the petitioner as one of its local churches.

The director denied the petition in part because the petitioner had failed to establish that it is covered by the group tax exemption documented above. On appeal, the petitioner submits various documents in an effort to establish the required affiliation. For example, the petitioner's articles of incorporation specify that the will receive the petitioner's assets if the petitioner dissolves as a corporation. At best, these materials indicate that the petitioner considers itself to be under the United Methodist umbrella; it does not show that any central authority of the denomination has recognized the petitioner, and formally notified the Internal Revenue Service that the petitioner is covered by the 1974 group exemption.

As noted above, the terms of the 1974 group exemption require the parent organization to identify the subsidiary entities covered by the group exemption. Therefore, assuming that the parent body has complied with this requirement, some type of roster or master list presumably exists, or at least some official of the denomination (not based at the petitioning church) is capable of verifying the petitioner's membership in the exempt group. The petitioner has submitted no such list, nor any other evidence to establish formal, official affiliation between the petitioner and the entity that holds the group exemption.

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), requires that the alien seeking classification "seeks to enter the United States" to perform a religious vocation or occupation. In this instance, the beneficiary entered the United States under a B-1/B-2 tourist visa. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working in a religious occupation or vocation.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks* to enter," which describes the entry as a future act. We therefore withdraw this particular finding by the director.

The director informed the petitioner of several documentary deficiencies in the record, and allowed the petitioner an opportunity to remedy those deficiencies. The petitioner has not adequately addressed most of the director's concerns, and therefore we cannot find that the petitioner has met its burden of proof with regard to the nature of the beneficiary's work, the beneficiary's experience, or its ability to pay the beneficiary's salary of $1,000.00 per month.

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.