U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

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:

[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 on appeal. The appeal will be dismissed.

The petitioner is an Anglican diocese. 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 priest. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition, (2) the purpose of the beneficiary's entry into the United States, (3) its ability to pay the beneficiary, or (4) that it had made a qualifying job offer to the beneficiary.

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
> >
> > (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).

Three of the grounds for denial, specifically qualifying experience, ability to pay, and purpose of entry, are somewhat interconnected and we shall therefore address them together.

The regulation at 8 C.F.R. § 204.5(m)(1) 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 April 4, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a priest throughout the two years immediately prior to that date.

[redacted] bishop of the petitioning diocese, states that the beneficiary "has been involved in full time Christian work in our Diocese . . . since 1997. . . . He was Ordained to the Priesthood in February 1999." Rt. [redacted]ector of St. Michael and All Angels Anglican Catholic Church, states that the

beneficiary "has served as Curate and Rector of Spanish Ministries at St. Michael and All Angels" since 1996. The petitioner's initial submission lacked such details as a schedule of the beneficiary's weekly hours of work.

The regulation at 8 C.F.R. § 204.5(g)(2) 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 initial submission contained no financial documentation. The director requested further evidence to show that the beneficiary has been continuously engaged as a minister during the two-year qualifying period, and to establish the petitioner's ability to pay the beneficiary's salary. In response, [redacted] as stated:

> In total over the last three years, [the beneficiary] has received modest reimbursements . . . [that] would amount to $3000 to $3600 dollars a year. . . .
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> [The beneficiary] has served in a vital part time position as a fully qualified clergyman. In many other Christian groups he would have been paid a living wage for the work he has done and continues to do. However, he and I are committed as hundreds of other clergy of our church to providing the best service possible regardless of the set backs we have experienced in the loss of our buildings and other assets due to the changing theology of the Episcopal Church. We are a relatively new independent branch of the World Wide Anglican Communion. . . . All the Bishops, and most of the Rectors of the Anglican Church, International Communion, are reimbursed for expenses, but do not draw even close to a living salary.
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> I am 72 years old with two retirement checks, and work full time in a Financial Planning firm, so I can help pay my expenses as a Bishop and Rector. [The beneficiary] is a qualified Piano repairman of whom there is a shortage, a Cultural editor of a newspaper, and a fully qualified Anglican Priest.

The petitioner has submitted unaudited balance sheets and income statements indicating that the church, as of December 31, 2000, had $27,224.42 in current assets, and that its expenses exceeded its income for the year by $2,092.11.

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

The director denied the petition, in part because the beneficiary has worked only part-time for the petitioner, and the petitioner has essentially admitted that it lacks the financial resources to pay the beneficiary "a living wage." On appeal, counsel argues that the director has not offered any credible support for the finding that part-time work is not qualifying experience. Counsel states "*Matter of Varughese* . . . specifically addressed the issue of continuously carrying on the vocation of minister so as to satisfy the requirements of the Act." Counsel also maintains that unpaid volunteer work can amount to qualifying experience. Counsel states "[t]he regulation even contemplates and allows a religious worker to be **dependent** upon supplemental employment for support as long as such employment is not the **sole** means of support."

Case law supports the director's reasoning. 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 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). Under the current statute, at section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), the petitioner must show that the alien seeks to enter the United States *solely* for the purpose of carrying on the vocation of a minister of a religious denomination.

Even in the case cited by counsel on appeal, the Board of Immigration Appeals found that a minister of religion who worked part-time without pay was not continuously carrying on the vocation of minister. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Given that this case shows that an unpaid, part-time minister cannot qualify for the classification sought, it is not clear why counsel cited *Varughese* as being favorable to the petitioner.

Other 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). In the instant proceeding, the petitioner has stipulated that the beneficiary has, and will continue to earn a living by obtaining other employment.

The regulation noted by counsel citing supplemental employment applies only to aliens in religious occupations; the statute and regulations plainly distinguish between the vocation of a minister and a religious vocation, and in this instance, the petitioner seeks to classify the beneficiary as a minister. Therefore, the beneficiary's past and future work must have been, and continue to be, *solely* in the vocation of a minister. In this instance, the petitioner has asserted that the beneficiary is a piano repairman and newspaper editor as well as a priest. The petitioner has admitted its inability to pay the beneficiary a "living wage," meaning that it is not possible for the beneficiary to work continuously and solely as a minister for the petitioner. While a church may provide a living for its minister through means other than cash salary payments (such as room and board), the petitioner here is not and does not claim to be providing sufficient support for the beneficiary.

Contrary to counsel's claims, case law firmly supports the denial of the petition and the dismissal of the appeal. The statute itself demands that the beneficiary enter the United States *solely* to work *continuously* in the vocation of a minister, rather than intermittently when not engaged in other employment.

The director, in discussing the purpose of the beneficiary's entry, discussed the beneficiary's nonimmigrant status. Such discussion is off-point. 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. For other reasons already discussed, however, the director was justified in finding that the beneficiary does not seek to enter the United States solely to work as a minister. The record indicates that the beneficiary also intends to continue working as a piano repairman and newspaper editor.

The remaining issue concerns the nature of the beneficiary's employment. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

> *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.

Bishop Ellis describes the position offered to the beneficiary:

> [The beneficiary] has been offered the position of bi-lingual priest in the Parish of St. Michael's and All Angels in El Paso, Texas. . . . This position requires him to conduct religious worship services and perform other spiritual/religious functions associated with the catholic faith as authorized by the Canons and Bylaws of the [petitioning diocese] and The Anglican Church. He is further charged to provide spiritual and moral guidance and assistance to church members and their families. He will assist the congregation in worship services, interpret the doctrine of our religion and instruct people who seek dialogue with our faith. He will counsel those in spiritual need and comfort the bereaved, visit the sick, seek out house-bound members of our congregation and help the poor in all communities.
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> In addition to his other duties, we have requested [the beneficiary] to serve as the Senior Advisor to our work with the Hispanic community in Arizona, Colorado, and Oregon as well as with our developing San Antonio Ministry.

The director requested further information regarding the nature of the beneficiary's duties. In response, the petitioner submits a letter from counsel. Counsel states:

> [The beneficiary] has been . . . Co-directing the Ministry. His principal occupation is to administer a variety of religious services and programs for our parishioners. . . . [The beneficiary performs] formal services as well as for quasi-religious functions such as wedding[s] and funerals.

Counsel's references to "our Ministry," "our liturgy," and so on, seem to imply that counsel is a member of the petitioning congregation, but counsel writes from a California address, whereas the petitioner is in Texas.

In denying the petition, the director stated "[t]he list of all duties performed by the beneficiary are not ones that can only be performed by [an] 'authorized member of the clergy of that religion.'" The director noted the petitioner's reference to "quasi-religious functions such as weddings and funerals." The director observed that the prefix "quasi-" suggests that these functions are almost, but not quite, religious in nature.

As noted above, indicated that the beneficiary "has served as Curate and Rector of Spanish Ministries at St. Michael and All Angels." Curate and rector are both considered clergy positions, rather than lay positions typically delegated to volunteers from the congregation.

As noted above, the statute and regulations differentiate between the vocation of a minister and a religious occupation. Throughout this proceeding, the petitioner has portrayed the beneficiary as a minister rather than as a lay worker in a religious occupation, and therefore the director's discussion is rather off-point. The beneficiary's duties, so far as they go, are consistent with the vocation of a minister and therefore there is no need to explore the question of whether the beneficiary works in a religious occupation. Counsel's use of the term "quasi-religious" was perhaps a poor choice of words, but it does not constitute proof that the beneficiary is not a religious worker. The petition remains denied for reasons cited elsewhere in this decision, but we hereby withdraw the director's findings regarding the beneficiary's engagement in a religious occupation.

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.