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: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

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 pastoral assistant. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastoral assistant immediately preceding the filing date of the petition. The AAO affirmed the director's decision and dismissed the appeal, noting also that the petitioner had failed to establish the nature of the beneficiary's duties, or its ability to pay the beneficiary's proffered wage.

On motion, the petitioner submits statements and financial documents.

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 March 22, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastoral assistant throughout the two years immediately prior to that date.

The beneficiary entered the United States on May 4, 1999, and thus spent most of the qualifying period in the United States.

In a letter accompanying the initial filing, Rev. [redacted], pastor of the petitioning church, referred numerous times to the beneficiary's employment in the future tense, stating that the beneficiary "will be responsible" for various functions, that he "will receive the usual compensation of a Pastoral Assistant," and that he "will be assigned" a parish "as soon as his legal status permits." This letter offers no indication that the beneficiary had already undertaken these duties.

Subsequently, in response to a request for information about the beneficiary's work history during the two-year qualifying period, [redacted] has stated that the beneficiary "has been a full time Minister" for the petitioning church, and that the beneficiary "has been supported by the Church with full care and maintenance" since his arrival in May 1999. [redacted] offers no information about the beneficiary's work outside the United States except for the general statement that the beneficiary "has served as a Minister continuously and without interruption for the past five years."

The AAO found that the petitioner had failed to "provide a detailed description of the beneficiary's means of financial support," thus making it impossible to determine whether the beneficiary worked as a minister or in any other occupation. The AAO also noted the complete absence of contemporaneous documentary evidence to support the petitioner's claims.

On motion, [redacted] maintains that the beneficiary has worked for the petitioner, but that the petitioner has withheld salary payments in order to avoid violating the law by employing an undocumented worker. There continues to be no actual evidence that the beneficiary has worked full-time for the petitioner since May 1999.

Furthermore, the first several weeks of the qualifying period took place before the beneficiary entered the United States. The record contains no information at all about the beneficiary's employment from March 1999 to his May 1999 arrival in the United States. Virtually the only evidence that concerns the beneficiary's activities outside the United States is a 1996 ordination certificate, which does not imply full-time employment in 1999. The director had specifically asked for the beneficiary's "work history beginning March 22, 1999." Several decisions later, despite several opportunities, the petitioner has still provided no information about the early part of the qualifying period. At this point, we will not accept any future attempt to provide such information. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), in which the Board of Immigration Appeals limited the circumstances under which appellate authorities must review evidence which the director had previously requested, but which the petitioner did not provide until the appellate stage.

The petitioner has not substantiated the beneficiary's claimed work in the United States from May 1999 onward, and has not offered any coherent claim about the beneficiary's work outside the United States from March 1999 to May 1999. Therefore, the petitioner has failed to establish that the beneficiary continuously carried on the vocation of a minister during the two-year period immediately preceding the filing of the petition.

Beyond the director's decision, the AAO found that "the petitioner has not provided sufficient evidence to demonstrate that the beneficiary is qualified as a minister as defined at 8 C.F.R. § 204.5(m)(2)." That definition reads, in full:

> *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.

Simply possessing a certificate of ordination and using the title "minister" does not establish that one qualifies for immigration benefits as a minister. *See Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). The AAO, in its dismissal notice, found that the petitioner has not adequately established that the beneficiary's duties conform to the regulatory definition. On motion, the petitioner does not address this finding.

The petitioner proposes to pay the beneficiary $2,100 per month. 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.

In dismissing the appeal, the AAO noted that the petitioner "failed to provide any financial documentation." On motion, the petitioner submits documentation showing an investment account which, at its peak, held $110,000, from which $50,000 was withdrawn in August 2001 to finance a new building. The petitioner asserts "[t]his account is for the salaries," but the account shows only one withdrawal (noted above) in over

two years of account activity. There is no evidence that any salary has ever been paid from the account. The petitioner also submits bank statements from two accounts, showing a total balance of $15,676.98 as of May 2003. One account is a savings account, untouched during the statement cycle except for an interest deposit. The other account is a checking account, from which withdrawals for the month exceed deposits by $4,337.96.

The petitioner submits a "Financial Report for 2002 Year," showing a starting cash balance of $1,216.59, plus $105,237.91 in income for the year, offset by $118,052.22 in expenses. The document states that this leaves a year-end balance of $9,402.28, but this does not compute from the above numbers, which actually yield a net loss of $11,597.72, a $21,000 discrepancy from the figures on the report. There is no evidence that the financial report is the result of an audit of the petitioner's finances.

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).

For the above reasons, the petitioner's submission on motion fails to rebut the findings set forth in the AAO's prior decision.

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 previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of May 14, 2003 is affirmed. The petition is denied.