U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

C-1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 2 4 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:

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.

Elizabeth O'Brien
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 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a minister of education and specialized literature at its bible college. 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. The director also determined that the petitioner had failed to establish that it had extended a valid job offer to the beneficiary, or that it had the ability to pay the beneficiary a wage.

On appeal, the petitioner submits a brief and additional documentation.

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).

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 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:
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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.

The petition was filed on June 22, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a religious worker throughout the two-year period immediately preceding that date.

The director determined that the beneficiary had not been employed in the same capacity as that of the proffered position. However, the director based her determination on an analysis of whether or not the beneficiary had engaged in a qualifying religious occupation during the two years immediately preceding the filing of the visa petition. Based on this analysis, the director determined the petitioner submitted no evidence that the beneficiary had any prescribed religious training established by the governing body of the denomination, and that the petitioner failed to submit a transcript to corroborate the beneficiary's bachelor of liberal arts degree. The director also determined that the evidence submitted did not provide proof of any compensation paid to the beneficiary for religious work.

In response to the director's request for evidence (RFE) dated March 6, 2003, the petitioner detailed the beneficiary's rise in the church from church secretary to evangelical pastor, president of the Evangelical [redacted] Brazil, professor of theology and specialized languages and literature, and executive general director of a theology school in [redacted] As evidence, the petitioner submitted a document from the [redacted] showing that the beneficiary graduated in 1991 with a bachelor's in language and literature, that he had enrolled in a master's program in July of 2002, and was pursuing those studies as of the date the document was prepared in May of 2003. A certificate from the university indicates that the beneficiary received a bachelor's degree in liberal arts in 1992. The record also reflects that the beneficiary began theology studies in 1987 at the Theological University of Education in Lorena and graduated in 1988, and that he was issued a "diploma" in 1986 from the [redacted] or a "theological course." The record also contains a 1991 certificate indicating the beneficiary completed an unidentified course under the auspices of his church, and a 1991 certificate from the University of São Paulo indicating that the beneficiary had completed a course entitled "Introduction to Judaic Mysticism."

The petitioner also submitted copies of monthly receipts from August 1999 to July 2001 signed by the beneficiary acknowledging that he received money from his church in São Paulo in amounts ranging from R$ 2,500 to R$ 7,300. The petitioner also included copies of the beneficiary's Brazilian tax returns for the years 1998 through 2001. The tax return for the year 2000, the only year that offers a full comparison, shows a difference of an additional R$ 13,000 in the amount of monies received from the church and that reported on the income tax return.

On appeal, the petitioner submitted a copy of the beneficiary's transcript from the University of São Paulo. Although the transcript is not accompanied by a full English translation as required by the regulation at 8 C.F.R. § 103.2(b)(3), we note that the beneficiary concluded his studies in 1991 and received his diploma on January 22, 1992. The petitioner also submitted a copy of the beneficiary's certificate indicating that he had received a bachelor's diploma for his completion of the theology course at the Theological University of Education in Lorena.

The petitioner resubmitted the receipts signed by the beneficiary and stated that such receipts were a proper form of acknowledgement for wages in Brazil. The petitioner stated the receipts show that the monies received were for "espostula," or voluntary payment for religious work. Although the petitioner stated it was including a page from the Portuguese dictionary defining the word "espostula," no such evidence appears in the record.

Nonetheless, the record establishes that the beneficiary received compensation for his religious work in Brazil. Further, even though the income as reported on his 2000 income tax return exceeds that indicated by his signed receipts from the church, the majority of the income reported on the tax return matches that received from the church. Additionally, the tax returns indicate the beneficiary's principal occupation is that of a priest or other religious worker.

The statute and regulation require that the beneficiary must have been performing the vocation, professional work, or other work continuously for at least the two-year period immediately preceding the filing of the petition. Although the record reflects that the beneficiary worked as a religious worker throughout the immediate two years preceding the filing of the petition, the evidence does not establish that the beneficiary worked in the same occupation for which the petitioner seeks entry under this visa classification preference.

The beneficiary's duties during those years, as described by the petitioner, included serving as an evangelical pastor and performing the traditional functions of a minister, serving as the President Pastor of the in Jundaí, and serving as general director of the denomination's theology school in São Paulo. According to the petitioner, the beneficiary began as an instructor at the school and was eventually promoted to the position of executive general director in 1996. As executive general director, the beneficiary's duties included "[e]stablishing operational policies, procedures and developing teaching objectives, supervising work activities of personnel engaged in the theology school administration, as well as its departments."

The petitioner initially stated that the beneficiary would be "acting solely to carry[] out the duties of Minister of Education and Specialized Literature from Monday through Friday between 9:00 am and 5:00 pm. In a detailed listing of the beneficiary's duties, the petitioner accounted for less than a 20-hour workweek. The listed duties included ministering in Sunday school and in worship services, selecting and preparing the theological Sunday school material for the main and subordinate churches, and teaching Bible college classes every Friday from 7:00 p.m. to 10:30 p.m. On appeal, in response to the director's concern that the job was not a full time position, the petitioner listed other responsibilities of the position. These included language and literature workshops, seminars and lectures; theology education, mission lectures, trips and training; congresses, and vocational Bible school.

The petitioner also stated on appeal that the beneficiary would be responsible for the planning, organization and directing of its new religious college. According to the petitioner:

> [T]he position offered, hours of employment, etc, showing a complex organizational system, where [the petitioner] will be responsible for planning, organizing, directing and controlling our in Florida.
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> The planning, organizing and directing of a new is so complicated and intricate that [the petitioner] ... discriminated [sic] that [the beneficiary] will also expend at least 19.25 hours performing additional duties, which are "Ministering in the Portuguese-speaking Worship Service", "selecting and preparing all the theological Bible Study services material ...", "teaching", etc. – But the officer judger understood that the total number of hours to be worked is just in that schedule of duties, which total is a least 19,25 [sic] hours.

The job responsibilities for leading the college, added to the job description for the first time on appeal, appear to be essential job duties of the proffered position. On appeal, the petitioner cannot materially change the job responsibilities associated with the petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The director determined that the petitioner had not established that it had made a valid job offer in that the it had not established that the position was a full time salaried position or that it was a traditional religious function. 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 petitioner's job offer is for the position of Minister of Education and Specialized Literature in its Bible College at a salary of $3,000 per month. The denomination owns and runs a theology school in São Paulo, where the beneficiary has taught and currently serves as the executive general director. As part of the duties associated with the proffered position, the petitioner includes ministering in Sunday school, prayer services, and worship services, as well as "advising students on academic and vocational curriculum that could be incorporated with theology and specialization in Old Testament's languages." The record reflects that the petitioner has established that this is a traditional religious function within the petitioner's denomination.

The director also determined that the petitioner had not established that the proffered position offered full-time religious work for the beneficiary. Part-time work is not a qualifying job offer for the purposes of an employment-based visa petition. As discussed above, the evidence presented by the petitioner with the initial

petition does not adequately establish the terms of the proposed employment. Therefore, it has not established that it has extended a valid job offer for full time permanent employment.

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

> 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 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 annual reports, federal tax returns, or audited financial statements.

In its response to the RFE, the petitioner submitted a copy of its first quarter 2003 Employer's Quarterly State report of Wages Paid to Each Employee for the state of Florida, showing it paid 11 employees $53,274. It also submitted unaudited financial statements for the periods January through December 2002, January to December 2001, and January to December 2000, and copies of bank statements for the months February through April 2003. The petitioner also submitted copies of its 2000 and 2001 federal Form 990, Return of Organization Exempt from Income Tax. However, these forms are not signed and there is no indication that they were filed with the Internal Revenue Service.

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. As the unaudited bank statements are based primarily on the representations of management, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. Further, the 2001 Form 990 shows a negative $967,828 in net assets. The evidence does not establish that the petitioner can pay the beneficiary the proffered salary of $3,000 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.