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: TEXAS SERVICE CENTER Date: JUN 2 4 2004

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

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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

www.uscis.gov

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

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 a youth minister. The petitioner states that it intends to compensate the beneficiary at a monthly salary of $800 (plus "love offerings'), in addition to room and board (provided by the pastor), transportation (car provided), and groceries and clothing (donated by members).

The director determined that the petitioner had not established that: (1) the beneficiary had been continuously engaged in a qualifying religious occupation or vocation for two years immediately preceding the filing date of the petition; (2) the beneficiary is qualified to engage in a religious occupation or vocation; and, (3) the petitioner has the ability to pay the beneficiary the proffered wage.

On appeal, counsel for the petitioner states that had the beneficiary worked for a salary subsequent to the expiration of his authorized period of admission as a nonimmigrant religious worker (R-1), he would have committed a crime. Counsel argues that an exception must therefore be made with regards to the requirement 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 indicates that a brief and/or evidence will be submitted within 30 days of filing the appeal. To date, no additional documentation has been received; therefore, the record is considered complete.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

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;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (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 Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (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.

The petitioner in this matter is described as a Pentecostal church, established in 1991, having a congregation of 73 members and an average attendance of 60 persons at Sunday morning worship services. In support of the petition, the petitioner has satisfactorily established that it qualifies as a bona fide non-profit religious organization. The petitioner has submitted a letter from the Internal Revenue Service, dated January 8, 2001, granting the petitioner tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC), as a religious organization described in sections 509(a)(1) and 170(b)(1)(A)(i).

The record reflects that the beneficiary is a native and citizen of Jamaica who was last admitted to the United States as a nonimmigrant visitor for pleasure (B-2) on January 7, 1997, with authorization to remain until July 6, 1997. On August 22, 1997, the beneficiary obtained a change of status to that of a nonimmigrant religious worker (R-1), with authorization to remain until July 6, 1999. On July 15, 1999, the beneficiary was granted an extension of his nonimmigrant R-1 status, valid until July 6, 2001. The Form I-360, Petition for Amerasian, Widow or Special Immigrant, indicates that the beneficiary has not been employed in the United States without the permission of Citizenship and Immigration Services (CIS).

In a letter dated November 10, 2002, the petitioner indicates that it has seven non-salaried employees and seven "church ministries/auxiliaries." In a letter dated June 9, 1999, the petitioner states that the beneficiary is the petitioner's only paid employee, and that he is furnished with a used vehicle. The petitioner's pastor does not receive a salary as he is a full-time employee for the State of Florida, where he earns an annual salary of $42,000.

In a letter dated June 1, 2001, the petitioner congratulates the beneficiary *and his spouse* for their services to the petitioner and states that it would like for *both of them* to continue in their positions "with remuneration of $1,000 per month plus previously agreed upon benefits." In an undated document contained in the record, the petitioner also states that it is offering both the beneficiary and his spouse "ministerial positions in the Youth and Sunday School Departments" at a salary of $800 per month in addition to love offerings, housing accommodation and transportation. It is not clear from either of these letters as to the beneficiary's specific duties and remuneration, as opposed to those of his spouse.

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

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> 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.

The petition was filed on May 4, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a religious occupation or vocation throughout the two-year period beginning on May 4, 1999. In the case of special immigrant ministers, the petitioner must establish that the beneficiary had been continuously and solely employed as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

The statute and its implementing regulations require that a beneficiary has been continuously carrying on the religious occupation specified in the petition for the two years preceding the filing date of the petition. The regulations are silent on the question of volunteer work satisfying the requirement. The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule.

The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed per se in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution.

The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, CIS interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, CIS must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation.

It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it

could on a salaried employee. Nor is there any means for CIS to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For all these reasons, CIS holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

In addressing this requirement, the petitioner has provided uncertified copies of the beneficiary's 1999 and 2000 Internal Revenue Service (IRS) Forms 1099-MISC, Miscellaneous Income. The 1999 IRS Form 1099-MISC is hand-written. The forms indicate that the beneficiary received $8,000 in "other income" from the petitioner in each year. The petitioner has not provided the beneficiary's Forms 1040, U.S. Individual Income Tax Returns. Furthermore, there is no corroborative evidence contained in the record concerning the beneficiary's employment from January 1, 2000 to May 4, 2001.

It appears that the beneficiary may have been employed by the petitioner on a contractual basis, not as a full-time salaried employee, in 1999 and 2000. There is no evidence of the beneficiary's employment in 2001, prior to the filing date of the petition. Based on the above discussion and the evidence provided, the AAO is unable to conclude that the beneficiary had been continuously employed as a full-time salaried employee during the requisite two-year period. For this reason, the petition must be denied.

The second 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.

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:
>
> (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
>
> (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, . . .

The petitioner states that it intends to employ the beneficiary as a youth minister. The petitioner also states, in a letter dated August 14, 2002, that "[the beneficiary] is an ordained minister in [the petitioner's church] and is duly authorized to conduct religious services." In an undated document contained in the record, the petitioner indicates that it is offering the beneficiary a "ministerial position."

With regard to the beneficiary's qualifications, the petitioner has submitted an "Exhorter's Certificate of License," issued to the beneficiary by the Christ Gospel Church of St. Petersburg, Inc., Florida, as well as certificates of appreciation and recognition issued to the beneficiary by the petitioner for his completion of the church building and outstanding service in the church's music ministry. A legal assistant to the petitioner's counsel states that an exhorter is, according to the petitioner, equivalent to a minister in the petitioner's denomination.

In this case, there is no indication that ordination is required for the position or that the beneficiary is ordained as a minister in the petitioner's denomination. Furthermore, the petitioner has not submitted sufficient evidence to establish the standards required for the position and how the beneficiary has satisfied those standards. Based on the evidence provided, the petitioner has not established that the beneficiary is qualified to engage in a religious occupation as a minister. For this reason as well, the petition must be denied.

The third issue raised by the director to be addressed in this proceeding is whether the petitioner has established its ability to pay the beneficiary the proffered wage.

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

> *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 addressing this requirement, the petitioner has submitted a bank statement and un-audited financial statements for the years ending December 31, 1998 and December 31, 1999. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements that are current as of the date of filing the petition. Therefore, the petitioner has not satisfied the documentary requirements of 8 C.F.R. § 204.5(g)(2). For this reason as well, the petition must be denied.

Beyond the decision of the director, the petitioner has not provided sufficient evidence to establish that a qualifying job offer has been extended to the beneficiary, and the proposed position qualifies as a religious vocation or occupation. Since the appeal will be dismissed based on the reasons discussed, these issues 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).

Further, while the determination of an individual's status or duties within a religious organization is not under CIS'S purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with 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*, 16 I&N Dec. 607 (BIA 1978).

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.