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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: NOV 01 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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 Seventh-day Adventist "health care and educational organization." 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 medical missionary lifestyle counselor. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also 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, that the position is that of a religious worker, that the beneficiary is qualified for the position, or that the petitioner had the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner submits a letter and additional documentation. We note that the petitioner interprets the director's Notice of Denial as a request for additional evidence. We further note that the director sent a request for additional evidence (RFE) to the petitioner on April 2, 2003. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.*

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)(3)(i) states, in pertinent part:

(3) *Initial evidence*. Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 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

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a copy of an April 26, 1994 letter from the IRS granting it tax exempt status under Section 501(c)(3) of the IRC as an organization described in sections 170(b)(1)(A)(ii) and 509(a)(1). This establishes that the petitioner was granted tax-exempt status as an educational organization.

The petitioner also submitted a letter from Fred Rimer, the executive secretary of the Gulf States Conference of Seventh-day Adventists, who states that the Uchee Pines Seventh-day Adventist Church is part of the Gulf States Conference of Seventh-day Adventist in Montgomery, Alabama, which in turn is a part of the North American Division of Seventh-day Adventist. The petitioner submitted no evidence that the petitioner was in any way related to the Uchee Pines Seventh-day Adventist Church, and failed to submit evidence of a group tax-exemption granted to the Seventh-day Adventist Church or evidence that it was covered under such a group exemption.

On appeal, the petitioner submits excerpts from the 2000 yearbook of the Seventh-day Adventist Church, which it states shows that the petitioner's relationship to the Gulf States Conference of Seventh-day Adventists, and the conference's relationship to the North American Division of Seventh-day Adventist Church. However, the copies submitted by the petitioner are illegible and provides no additional information relevant to this petition. The

petitioner also failed again to submit evidence that it was covered under a group tax-exemption granted to the Seventh-day Adventist Church, that the IRS had granted it tax exemption as a religious organization or the evidence required under 8 C.F.R. § 204.5(m)(3)(i)(B) to establish its eligibility as a tax-exempt religious organization.

The petitioner's evidence is insufficient to establish that it is a bona fide nonprofit religious organization, exempt from taxation as required by the statute and regulation.

In its June 14, 2002 letter accompanying the petition, the petitioner stated that the beneficiary had worked as a medical missionary lifestyle counselor for the past three years. In her RFE, the director instructed the petitioner to submit evidence that the beneficiary had been working continuously in the position for the two years immediately preceding the filing of the petition on June 19, 2002. The director specifically requested that the petitioner submit evidence that the beneficiary worked full time in the position and that she was compensated for her work. In response, the petitioner submitted a letter in which the petitioner's president stated that the beneficiary worked approximately 38 hours per week and received housing and a "small stipend," which at that time was $608.00 per month. He also included a "typical" work schedule for the beneficiary. The petitioner submitted no evidence to substantiate the beneficiary's employment during the two years prior to the filing of the visa petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On appeal, the petitioner submits copies of what appears to be check stubs, reflecting that the beneficiary was paid $620.00 per month for most of the two-year period immediately preceding the filing of the visa petition. The documentation reflects months in which the payment exceeded $620.00 and months when the payments were less, including July 2000 when the payment was listed as $93.00. However, as discussed above, as the petitioner failed to submit this evidence when instructed to do so by the director, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The evidence of record before the director was insufficient to establish that the beneficiary had worked continuously in the occupation for two full years preceding the filing of the visa petition.

According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

In its letter accompanying the petition, the petitioner described the duties as a medical missionary lifestyle counselor as being "similar to that of a 'catechist' and Christian 'nurse' combined who uses natural remedies and prayer for healing of the body, mind, and soul." The petitioner listed the job duties of the lifestyle counselor as:

a. Morning or evening worship service for patients.
b. Patient care, including assisting the missionary physician with physical examinations and administering prescribe[d] natural treatments . . .
c. Patient lectures and education which may include talks on "Stress Management," "Natural remedies", no-cholesterol cooking classes, one-on-one patient counseling; spiritual support and teaching Bible topics.

d. Phone duties day or night, responding to calls for help from the sick and depressed leading them to know and to trust God.
e. Medical conferences . . . followed by accompanying the physician during visits and prayer with the patients.
f. Supportive duties to female guests as needed.

The director determined that the petitioner had not demonstrated that the position is that of a religious vocation in accordance with the regulation.

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 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. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) 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.

While the evidence submitted by the petitioner indicates that the position requires some knowledge of the petitioner's religious creed, the evidence does not establish that the proffered position is not primarily secular in nature. Most of the duties described by the petitioner and listed on the beneficiary's work schedule involve the physical care of patients, health lectures or healthy cooking classes. Although the Seventh-day Adventist Church may promote spiritual health through physical health, the majority of the duties do not appear to be related directly to the religious creed of the denomination.

The evidence does not establish that the position is a religious occupation within the meaning of the regulation. 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 director also determined that the petitioner had not established that the beneficiary was qualified for the position.

The petitioner submitted a copy of a June 2000 certificate that it issued to the beneficiary certifying her as a lifestyle counselor. The certificate indicated that the beneficiary had "undertaken a course of study and practical training in hydrotherapy, massage, natural medicine, and patient care at a level involving the whole person." On appeal, the petitioner submitted a copy of the beneficiary's 1977 certificate of completion as a

nurse and a copy of her 1975 certification as a registered midwife. The evidence is sufficient to establish that the beneficiary qualifies for the position within the organization.

The director further determined that documents submitted by the petitioner were insufficient to establish that it has the ability to pay the beneficiary a wage. 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 letter of July 1, 2003, the petitioner stated that while the organization does not require a vow of poverty, its members "live in a similar manner as those who do, and as such [the petitioner does] not pay any worker a salary." The petitioner indicates that it pays a stipend to its workers and provides them with housing. The petitioner indicated that the beneficiary's stipend at that time was $608.00 per month. As discussed above, the petitioner did not submit evidence of its payments to the beneficiary to be included as part of the record before the director, but did submit such evidence on appeal.

The petitioner submitted no evidence to address this requirement with the petition. In response to the director's RFE, the petitioner submitted a copy of a balance sheet as of December 31, 2002. On appeal, in addition to copies of pay stubs reflecting payments to the beneficiary during the months of June 2000 through December 2002, the petitioner submitted additional financial documentation, including an unaudited financial report for 2002 and a copy of its August 2002 commercial checking account bank statement.

As previously stated, as the petitioner failed to submit the documentation when requested to do so by the director, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. at 764; *Matter of Obaigbena*, 19 I&N Dec. at 533. We note, however, that 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 evidence to establish its ability to compensate the beneficiary as of the filing date of the petition.

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.