C1

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:

IN RE: Petitioner: [redacted]
Beneficiary:

NOV 01 2004

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.

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 sustained and the petition will be approved.

The petitioner is a "Christ-centered religious denomination." 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 the Asian-Pacific Administrator of its ministry of religious outreach programs. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization or that it had the ability to pay the proffered wage.

On appeal, counsel submits a letter 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;
>
> (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.

The petitioner submitted an April 20, 1999 letter from the Internal Revenue Service (IRS) to Morning Star in Rolling Hills Estate, California, granting it tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i). The letter does not grant the organization a group tax-exemption applicable to its subordinate units.

The petitioner must either provide verification of individual tax exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility for tax exemption. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The record reflects that in Rolling Hills Estate, California serves as corporate headquarters for the petitioner. However, the petitioner submitted no evidence that the tax-exemption granted by the IRS to the California organization applies to any of its subordinate units. The petitioner further failed to submit any evidence pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B).

The evidence reflects that the beneficiary works in the petitioner's organization in Tennessee. However, the evidence also reflects that the petitioner's corporate headquarters in California pays the beneficiary's salary. Although the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, reflects a Tennessee address, it is signed by the organization's general manager. The letter accompanying the petition reflects the California address and is signed by the same individual. The duties of the petitioner's job reflect that her work is done on an organizational level rather than on a local or regional one. Therefore, regardless of her physical location, the record reflects that she is an employee of the petitioner's California headquarters.

The evidence is sufficient to establish that the organization for which the beneficiary works is a bona fide nonprofit religious organization, exempt from taxation as required by the regulation.

A petitioner must also demonstrate its ability to pay the proffered 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 a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

The petitioner stated it would pay the beneficiary $40,000 per year. It submitted a copy of a revenue and expense statement for 2001, copies of W-2s, Wage and Tax Statements, that it issued to the beneficiary in 2000, 2001, and 2002, and copies of the beneficiary's tax returns for the same period. The beneficiary's 2002 Form W-2 indicates that she was paid in excess of $46,000, including nontaxable compensation. The petitioner also submitted a letter from the petitioner's general manager, who stated that the organization has 117 salaried employees and has income in excess of $6.9 million.

On appeal, counsel asserts that the statement from the general manager coupled with the financial document is sufficient to establish the petitioner's ability to pay the proffered wage. We note first that the regulation does not mandate that the director accept this substitute for proof of the petitioner's ability to pay a wage. The regulation clearly states that the director "may" accept such documentation. Further, the regulation requires the statement to be from a financial officer of the organization. The petitioner submitted no evidence that the general manager who signed this document serves in such a capacity.

Nevertheless, we find that the evidence in this case sufficiently establishes that the petitioner has the ability to pay the beneficiary the proffered wage.

The director stated that it could not be determined that the beneficiary's sole purpose in entering the United States was to work for the petitioner. The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa. We withdraw this statement by the director.

The evidence of record is sufficient to establish that the petitioner is approvable pursuant to the statute and regulations.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.