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U.S. Citizenship
and Immigration
Services

[redacted]

C1

File: [redacted] Office: TEXAS SERVICE CENTER Date: NOV 04 2004

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)

IN 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

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), in order to classify him as a minister.

The director denied the petition on June 6, 2003, finding that the petitioner failed to establish that the beneficiary was employed during the two years preceding the filing of the petition in the same position as the one being offered by the petitioner. The director further found that the beneficiary's proposed position as a minister does not constitute a religious occupation. Finally, the director found that the petitioner failed to establish its tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

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) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an 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 year period 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."

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 6, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister in the petitioner's denomination throughout the two years immediately prior to that date. The record reflects that the beneficiary was not approved for an R-1 nonimmigrant visa until August 4, 1999, and that he last entered the United States on January 2, 2001. Therefore, as the beneficiary was outside of the United States for part of the two-year period, his experience in the United States cannot suffice to meet the experience and denominational membership requirements.

In a letter submitted with the petition at the time of filing, the petitioner indicates that the beneficiary "has been employed for the preceding two years [by the petitioning] church on an R-1 visa." The only evidence submitted to establish the beneficiary's employment with the petitioner, however, is a copy of the beneficiary's 2001 W-2 Wage and Tax Statement, reflecting that the beneficiary earned $14,744.71. The record also contains the petitioner's 2001 "payroll tax filings," tax withholding for Arkansas, and employee payroll data.

The only evidence submitted to establish the beneficiary's continuous employment in the requisite two-year period to encompass the time prior to his entry into the United States, is a letter from Harris Lee Goodwin. In his letter, [redacted] indicates that the beneficiary worked at the [redacted] Center" from September 1997 to September 1998, and that the beneficiary resigned "because of an opportunity that was given to him to work with [the petitioner]. This letter, however, does not establish that the beneficiary was employed in the same capacity or denomination as the petitioning church.

On appeal, the petitioner submits a second letter from [redacted] who again confirms that beneficiary worked for the [redacted] from September 1997 until September 1998. The petitioner also submits a letter from [redacted] Elder of the Pleasant Valley Church of Christ. In his letter, [redacted] states that the beneficiary:

> [H]as been employed as a Spanish speaking minister by the [petitioner] since August of 1999. It is our desire that he will be permitted to continue to serve in that capacity in the future.
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> [The beneficiary] was offered this position because he has earned his Bachelor degree in Bible from the Baxter Institute in Honduras in 1996 and worked as a Christian minister, at the Clinic Anicus (1997-1998), for the two years prior to coming to work for us.
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> * * *
>
> [The beneficiary's] education and work experience uniquely qualify him to fill the position of Spanish Minister in our denomination. This position is traditionally a permanent, full-time, salaried occupation within our denomination. For verification purposes, please see attached Salary [sic] records for [the beneficiary] for the periods September 1999 through June 2003.

We do not find letter to be convincing or credible. The new claim on appeal, that the beneficiary began working with the petitioner as early as 1999, directly contradicts the petitioner's original letter stating the beneficiary was first employed with the petitioner on an R-1 visa. As noted earlier, the visa was not approved until August 4, 1999 and the beneficiary indicates he did not enter the United States until January 2, 2001. Although entry-exit stamps on the photocopy of the beneficiary's passport indicate that he entered the United States at various times since 1999 on an R-1 nonimmigrant religious visa, there is no independent evidence documenting his employment as such before 2001. provides no indication as to how the beneficiary was working for the petitioner or where the beneficiary was working from August 1999 until his entry into the United States.

does not provide copies of actual paychecks or canceled checks to establish that the beneficiary was being remunerated for full-time work. The copy of the petitioner's salary records are computer-generated printouts, and as such do not have the same evidentiary value as the W-2 form. 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). The petitioner has submitted insufficient evidence to establish that the beneficiary was continuously working as a minister in the petitioner's denomination throughout the two years immediately preceding the filing of the petition.

The next issue is whether the beneficiary's position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definition:

> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fundraisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position it is offering qualifies as a religious occupation as defined in the regulation. 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 reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature

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.

In the statement submitted on appeal, Mr. Cannedy refers to the beneficiary's duties. He states:

> [The beneficiary] was hired solely to carry on the vocation of a minister to the Spanish speaking population of the community served by our church. In this capacity he preaches and teaches and performs other religious duties such as religious counseling and religious instruction. He also serves as a religious missionary to the Spanish-speaking population of our community.

The regulation specifies that religious occupations involve activities that related to traditional religious functions. The nature of the activity performed must embody the tenets of the particular religion and have religious significance. Their service must be directly related to the creed of the denomination.

Upon consideration of the available evidence, we are not persuaded that the petitioner's denomination regards the beneficiary's position as a traditional religious function, with such Spanish-speaking ministers being routinely employed full-time at the denomination's churches. In this instance, the petitioner has failed to show that any person has been employed a person in the capacity of a Spanish-speaking minister prior to the beneficiary. As noted previously, the evidence does not establish that the beneficiary was paid for full-time employment until January 2001. The fact that the petitioner was able to provide services and operate as a church for more without the beneficiary or any other person serving in this capacity, does not support the petitioner's assertion that the beneficiary's position is a traditional religious function.

The remaining issue is whether the petitioner is considered a qualifying tax-exempt religious organization. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 [IRC] 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
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> (B) Such documentation as is required by the Internal Revenue Service [IRS] to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner's initial submission contained a copy of its articles of incorporation referring to the petitioner as a being tax-exempt. Additional copies were also submitted on appeal. However, the petitioner's own claim to tax-exemption is not evidence that the Internal Revenue Service (IRS) will recognize, or has in fact, recognized the petitioner as a tax-exempt religious organization.

On January 10, 2004, more than six months after filing the appeal, the petitioner submits a copy of the "Determination Letter Request" the petitioner submitted to the IRS. The regulations do not state or imply that the petitioner may freely supplement the record up until the date of appellate adjudication without making a written request and demonstrating good cause.[1] Regardless, this additional evidence does not satisfy the requirements of 8 C.F.R. § 204.5(m)(3)(i).

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[1] *See* 8 C.F.R. § 103.3(a)(2)(vii).

In this case, the petitioner has not submitted any documentation, as indicated in 8 C.F.R. § 204.5(m)(3)(i)(A), to show that the IRS has granted the petitioner a tax exemption under 501(c)(3) of the IRC.

Further, the petitioner has failed to provide evidence, as indicated in 8 C.F.R. § 204.5(m)(3)(i)(B), of documentation required by the IRS to establish eligibility under section 501(c)(3) of the IRC. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

(1) A properly completed IRS Form 1023;
(2) A properly completed Schedule A supplement, if applicable;
(3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
(4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The Yates Memorandum does not state that the petitioner must provide one item from the above list. Rather, *all* the listed documents, "at a minimum," are necessary to establish that the entity has represented itself to the IRS as being primarily a religious organization. The petitioner's appellate submission does not, however, include all of the above documentation. Specifically, the petitioner's articles of incorporation do not contain the appropriate dissolution clause, and the record is devoid any evidence, such as brochures, calendars, flyers, or other literature describing the petitioner's religious nature and purpose. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

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.