U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

NOV 23 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

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)

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

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, 8 U.S.C. § 1153(b)(4), to perform services as a pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition. The AAO affirmed the director's decision and dismissed the appeal.

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 . . . ; 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 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."

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.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two years immediately prior to that date.

The petitioner had indicated that, from 1999 to 2001, the petitioner had served as a pastor at United Telugu Christian Fellowship (UTCF). The petitioner's earlier submissions contained vague, sometimes conflicting accounts of the beneficiary's duties, with no indication of the hours devoted to those duties, despite the director's specific request for information to establish "the time spent per week by the beneficiary performing those duties." An official of the petitioning church has indicated that the beneficiary "is offered a position that will be part of the licensing process for Diaconal Ministry in Music. . . . His time per week will be 35 hours. . . . His primary work will be to communicate the gospel through music and gathering groups of youth to train in traditional religious music and to offer free shows to invite people to our church." This letter describes what the beneficiary "will" do, rather than what he *did* do during the 1999-2001 qualifying period, and the list of future duties is that of a choir director rather than a pastor. A "minister of music" is not a "minister" for immigration purposes. *See Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The AAO, in rendering its earlier decision, already considered the petitioner's appellate submission. The petitioner, on motion, does not state how the AAO's treatment of that material was deficient. The filing of a motion does not compel *de novo* review of the entire record of proceeding.

The petitioner submits a new letter from [redacted] executive general secretary of UTCF, who states that the beneficiary worked "about 35 hours per week" conducting worship services on Sundays, home visitations on Tuesdays, youth meetings on Wednesdays, Bible studies on Thursdays, fasting and prayers on Fridays and music ministry/choir preparation on Saturdays. The director had requested detailed information on February 11, 2002. The petitioner does not explain why it took UTCF until July 2003 to provide this information. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence in response to the initial notice, and again on appeal. The petitioner now submits some of the requested information on motion. However, the AAO is not obligated to consider this information at this late date. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Furthermore, the record continues to lack contemporaneous documentation. The petitioner had previously provided a somewhat similar, but less detailed, letter from [redacted] and the AAO had already determined that the letter was insufficient and that verifiable, objective evidence was necessary.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.[1] As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered "new" for the purposes of a motion.

The petitioner submits Form W-2 Wage and Tax Statements issued to [redacted][2] vice president of the petitioning church, and his spouse [redacted] These documents show that Mr. [redacted] is employed in two secular jobs with medical companies. The petitioner has submitted this evidence to show that Mr. [redacted] earns enough to cover the beneficiary's basic needs. The petitioner's ability to pay the beneficiary's salary was not raised in the denial or the subsequent dismissal notice; but even if it was, the

[1] The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <*new* evidence> . . . ." *Webster's II New Riverside University Dictionary* 792 (1984)(emphasis in original).

[2] Tax documents state his first name as "Williams," but on his own correspondence, he spells his name "William" and we have chosen that spelling.

petitioner must establish the *employer's* ability to pay. Financial information about individual church officials cannot meet this burden because the petitioner is a corporation, legally separate from any one individual. Tax documents show that M and his spouse donated $5,210 to the petitioner in 2002, a generous contribution but insufficient to support the beneficiary for a year, even assuming that none of the contribution went to any other purpose but the beneficiary's support.

The AAO dismissed the appeal, and concurred with the director's finding that the petitioner has not provided sufficient information or evidence to establish that the beneficiary worked continuously and exclusively as a minister throughout the two-year qualifying period.

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 previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of July 2, 2003 is affirmed. The petition is denied.