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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 26 2004
SRC 02 040 55579

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]

PUBLIC COPY

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

The petitioner is a religious missionary order. 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 executive field assistant to the vice president for Africa, Middle East and Central Asia Regions. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious vocation or religious occupation.

On appeal, the petitioner submits several documents, most of them duplicating previous submissions. Counsel asserts that the director's decision is confusing. The decision does appear to be rather poorly organized, but counsel's arguments on appeal discuss the main grounds for denial. Therefore, the state of the denial notice does not appear to have prejudiced the petitioner's ability to present a meaningful 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;
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> (ii) seeks to enter the United States--
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> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> > (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
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> > (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
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> (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) 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 November 7, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing essentially the duties of the proffered position throughout the two years immediately prior to that date.

An official from the petitioner's "General Counsel's Office – Florida," whose signature is not fully legible, states:

> [The beneficiary] has been an employee as a senior staff member of the [petitioning] organization for more than two years.
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> [The beneficiary] will be employed by [the petitioner] as Executive Field Assistant to the Vice President for Africa, Middle East and Central Asia Regions. He is qualified in this religious occupation through his many years of experience as the National Director of [the petitioner's branch in] Kenya. . . .
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> [The beneficiary's] previous responsibilities for the foreign ministries has [sic] been coordinator of Nairobi Region and Indigenous Churches in Kenya; Director of all ministry affairs for the country of Kenya; training leadership personnel in all activities of the ministry including personnel management and as Executive Field Assistant to the Vice President of Africa, Middle East and Central Asia Regions.

The director requested further information and evidence to establish the date when the beneficiary assumed the duties of executive field assistant, as well as "a detailed description of the beneficiary's prior work experience." In response, counsel states that the beneficiary has held that position "[s]ince July, 1999." The petitioner submits copies of pay statements, and the beneficiary's tax returns, which identify his occupation as "International Staff." The petitioner also submits a copy of the beneficiary's resume, but no contemporaneous evidence from 1999 to indicate that the beneficiary had, at that time, assumed the duties of executive field assistant. The petitioner did not submit the detailed description of the beneficiary's prior work experience that the director had requested.

The director denied the petition, stating that the petitioner has not established that the beneficiary worked full time as executive field assistant for at least two years before the petition's filing date. The director noted that the record contains negligible primary evidence to establish the time or nature of the beneficiary's work, and that the petitioner has not demonstrated that such primary evidence is unavailable. The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

> The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

The director noted that the petitioner's payments to the beneficiary have fluctuated, and pay statements are addressed jointly to the beneficiary and his spouse. Regarding the joint payments, the petitioner's *Human Resources Handbook* indicates, on pages 6 and 19, that married couples must both serve concurrently as Missionary Staff Members. The petitioner's initial submission specifically called attention to this

requirement. Because the petitioner's policy requires the employment of both the beneficiary and his spouse, it is not unusual or inherently suspicious that pay statements would list both names.

That being said, other questions remain. The salary for the position is $35,000 per year. The record contains a copy of a 2000 income tax return, on which the beneficiary reported only $2,368 in income for the year. The 2001 return shows a joint total of $9,474 in income for the beneficiary and his spouse.[1] Thus, the tax returns do not demonstrate that the beneficiary was receiving anything approaching the annual salary of an executive field assistant during the qualifying period.

On appeal, following a two-month extension to obtain additional evidence from Kenya, counsel repeats the assertion that "[i]n July 1999 [the beneficiary] became Executive Field Assistant to In August 1999, when was transferred to the United States . . . . [The beneficiary] was also transferred to the United States." The record contains nothing to substantiate this chronology. himself states "[i]n July 2000 [the beneficiary] moved to the US to serve in his present capacity as the Executive Field Assistant." does not indicate that the beneficiary had acted as an executive field assistant prior to July 2000. Similarly, counsel claims that another "letter from (Exhibit 18) clearly stated that [the beneficiary's] job duties in the United States would be the same as his job duties in Kenya." The letter reproduced at Exhibit 18 does not indicate that the beneficiary's "job duties in the United States would be the same as his job duties in Kenya." The letter is clearly in the form of a job offer to the beneficiary. While the letter acknowledges that the beneficiary has worked with in the past, there is nothing to indicate that the beneficiary had previously held the position of executive field assistant; it refers only to what the beneficiary's duties "will be." The beneficiary's own resume or curriculum vitae represents an after-the-fact claim, rather than primary evidence in support of such a claim.

Counsel also cites a new statement, essentially a point-by-point reply to the denial notice. Counsel states that the beneficiary wrote the statement, but it is unsigned and contains no internal attribution. Such statements are not evidence. Furthermore, this statement contains the acknowledgement that "[i]t should be noted that the experience is not two years but the beneficiary has more than 10 years of experience in the ministry. It appears as if the 2 years experience was being gained on the job!" If counsel seeks to demonstrate that the

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[1] Questions of credibility arise regarding the beneficiary's tax returns. On the 2000 individual tax return, the beneficiary listed himself as "single." A number entered under "Spouse's social security no." has been blacked out. The beneficiary listed no dependents. The beneficiary signed the return, on a line that reads "[u]nder penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete." The beneficiary also submitted a "Nonresident Alien Income Tax Return" for 2000, on which he referred to himself as a "married nonresident alien" with no dependents. Both returns were prepared the same day, December 6, 2001, by the same certified public accountant That accountant also prepared the 2001 joint tax return for the beneficiary and his spouse (which listed three children as dependents). The 2001 return was prepared on August 28, 2002. Thus, both the 2000 and the 2001 returns were prepared well after their respective April 15 filing deadlines.

The Form I-360 petition, prepared in October 2001, lists the beneficiary's spouse and four children, and indicates that the beneficiary married his spouse in December 1977 and has lived with her since that time. The 2000 tax return that lists the beneficiary as single (and which the beneficiary signed under penalty of perjury) constitutes material misrepresentation on a government document. Page 17 of the petitioner's *Human Resources Handbook* states that "each Missionary Staff Member is . . . expected to demonstrate honesty and the highest ethical standards in all ministry, business, and personal dealings." It is not known whether the petitioner had noticed the discrepancies on the above tax returns (all filed late) when it provided copies of those returns to the director.

beneficiary possesses two years' experience in the specific position, it is not clear how that argument is advanced by an unsigned statement indicating "the experience is not two years."

The petitioner has employed the beneficiary in some capacity for several years, but the available evidence is not sufficient to warrant the finding that, throughout the two-year qualifying period, the beneficiary continuously served as an executive field assistant, or in a similar position with essentially the same duties.

The other issue is whether the petitioner seeks to employ the beneficiary in a qualifying vocation or occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

> *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.
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> *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, fund raisers, or persons solely involved in the solicitation of donations.
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> *Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

With regard to religious occupations, the lists in the above regulation reflect that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Citizenship and Immigration Services 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.

A job offer letter from the petitioner's vice president of Africa, Middle East and Central Asia Region (AFRICAME), lists the duties of the executive field assistant:

- To represent the interests of the Vice President within the AFRICAME region (as and when requested). This includes traveling to ministry sites and attending meetings within AFRICAME.
- To assist the Vice President in any capacity related to his duties on request.
- To assist the Vice President in analyzing field reports; and in the use of the information in making good leadership in management decisions.
- To assist the Vice President in analyzing financial reports from the Area of Affairs (AOAs) in AFRICAME; and in the use of the reports in making good leadership in management decisions.

- To assist the Vice President in developing an integrated strategic ministry plan for the AFRICAME region.
- To assist the Vice President in evaluating the effectiveness of the strategic plans and advise how they can be approved.

In a subsequent submission, counsel states:

> As Executive Field Assistant, [the beneficiary] has been responsible for the day to day operations of ministries located in his geographic area. If you look at the front cover of the 2001 Global Ministry Report found in the documentation, you will see that one of three regional vice presidents and that under him there are four regional directors of affairs. [The beneficiary] sits beside to assist him with this enormous responsibility.

On the inside front cover of the document mentioned, Dela Adadevoh's photograph and title appear directly above the photographs and titles of four directors of affairs within Mr. Adadevoh's region. The beneficiary's name, picture, and title do not appear in the chart, or anywhere else in the 2001 Global Ministry Report. The cited document, therefore, does not even confirm that the petitioner employs executive field assistants, let alone verify that the beneficiary has been and will continue to act in that capacity.

The director determined that "the beneficiary's roles and duties were almost entirely administrative and secular in nature." Counsel, on appeal, contends that the director "asserts, from out of nowhere, that [the beneficiary] is involved in fundraising or the solicitation of funds." While we disagree with the director's finding in this particular area, the assertion is not "from out of nowhere." The director noted that the petitioner's 2000 Annual Report states (on page 19): "[s]taff members . . . are responsible for securing contributions to the Ministry to cover the costs of their salary, training, ministry and fundraising expenses, plus a portion of the administrative and international expansion costs." The director determined that the beneficiary is, therefore, a fundraiser, whose position lies outside the regulatory definition of a religious occupation. By this logic, *all* of the petitioner's staff members would be non-qualifying "fundraisers."

While the beneficiary's duties *include* fund raising, that is not his sole or primary duty. We do not interpret the regulations to mean that *any* fund raising activity, however minimal, is automatically disqualifying. Even a minister participates in fund raising by including an offertory in a weekly religious service. In this instance, nothing in the job description indicates that fund raising occupies a significant proportion of the executive field assistant's time.

On appeal, counsel contends that the beneficiary is a minister, *and* a worker in a religious vocation, *and* a worker in a religious occupation. Counsel asserts that the beneficiary "is a minister doing the work of a minister, all the time, every day," but the record offers no support for this assertion. While some background documents refer to "ministry," this is a general term used by many religious sects to describe a broad array of activities undertaken in the name of the faith, rather than the specific duties of a minister *per se*. There are references indicating that the beneficiary took vows, but exhibit 25, listed as a copy of those vows, is missing from the petitioner's submission on appeal. Officials of the petitioning entity repeatedly refer to the beneficiary as a "missionary," rather than as a "minister." The evidence overwhelmingly indicates that the beneficiary is a paid staff member, and therefore, if his position were to fall into any of the three classifications, it would be that of a religious occupation. But the duties, as described, do not appear to involve traditional religious functions or religious activities. Instead, the duties as described appear to involve logistical and administrative support for an official of the petitioning entity.

Counsel argues that the director erred in determining that the beneficiary's proposed duties are largely administrative in nature, but the petitioner provides no new evidence on appeal to refute the director's findings. Counsel's own interpretation of the nature of the beneficiary's duties carries no weight, particularly given the repeated instances in which counsel claims that a particular document "clearly" supports a given claim, when in fact the cited document does no such thing.

The petitioner has not demonstrated that the beneficiary's duties are essentially religious, rather than administrative, in nature. As explained above, the petitioner has also failed to establish that the beneficiary continuously performed the duties of the position 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 appeal will be dismissed.

ORDER: The appeal is dismissed.