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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: VERMONT SERVICE CENTER Date: NOV 26 2004
EAC 02 171 53252

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

for 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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is the New York branch of an international ministry. 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 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. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, or that the petitioner possesses the required tax-exempt status as a religious organization.

Prior to issuing the denial decision, the director had issued a detailed request for evidence on December 22, 2002. The director allowed the petitioner 12 weeks to respond, the deadline being stated as March 19, 2003. In response to that notice, counsel requested an extension of time because a church member in possession of some of the required documents had been ill. The director ultimately received a substantive response on March 31, 2003. The director, in denying the petition, cited 8 C.F.R. § 103.2(b)(8), which allows "12 weeks to respond to a request for evidence," but states that "additional time may not be granted" beyond that 12-week period.

On appeal, counsel asserts that the petitioner did respond timely to the notice, because the petitioner had requested an extension until March 31, 2003, and the petitioner then met this self-imposed deadline. Counsel claims that the request for extension was granted, but the record contains no evidence to support this claim. Even if granted, any such extension would be contrary to 8 C.F.R. § 103.2(b)(8), which unambiguously and without exception states that "additional time may not be granted" to respond to a request for evidence.

When a petitioner fails to submit a timely, substantive response to a request for evidence, 8 C.F.R. § 103.2(b)(13) indicates that the petition "shall be considered abandoned" and denied. 8 C.F.R. § 103.2(b)(15) indicates that there shall be no appeal of a denial for abandonment. In this instance, the director chose to deny the petition on the merits, thus affording the petitioner the opportunity to file an appeal. We shall consider the petition and the appeal. We shall not, however, consider the materials untimely submitted in response to the request for evidence. If the petitioner desires consideration of these materials, the director should re-submit them in the context of a new petition. If the petitioner fails timely to submit requested materials in response to a request for evidence, such materials shall not be considered on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

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 . . .; 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) 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 April 23, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

Rose Faloye, secretary of the petitioning branch, states that the beneficiary has worked "as a Pastor with the US Branch of [the petitioning] Church" since January 1999, and "has also been instrumental in establishing branches of the Church in New Jersey, Texas, Maryland, Illinois, Georgia, and Michigan."

The director denied the petition based, in part, on the lack of evidence to corroborate the petitioner's general assertions regarding the beneficiary's experience. On appeal, the petitioner submits copies of previously submitted documents regarding the beneficiary's education and ordination. These documents predate the 2000-2002 qualifying period, and thus cannot establish that the petitioner continuously worked as a pastor during that period.

Counsel notes that the beneficiary has been present in the United States under an R-1 nonimmigrant religious worker visa. The director, in denying the petition, had noted that the beneficiary's visa status is not *prima facie* proof of continuous, qualifying employment; the visa does not document the beneficiary's activities after he received that visa. Counsel, on appeal, does not rebut the director's observation.

The next issue is whether the beneficiary's intended duties amount to qualifying religious work. The regulation at 8 C.F.R. § 204.5(m)(2) defines "minister" as 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.

Rose Faloye states that the beneficiary's "duties in this position will continue to include the following: conducting religious worship, Bible studies, solemnization of marriages, deliverance ministrations, and administering water baptism; providing spiritual guidance and counseling, coordinating the activities of our branches in the US."

The beneficiary swore a "statement of ordained clergy" for the New York City Clerk on September 20, 1999, indicating that he was ordained as a pastor on June 15, 1996 by [redacted] general overseer of the petitioning ministry. The beneficiary's ordination certificate, dated June 15, 1996, refers to the beneficiary as an "[redacted] in a letter dated February 7, 2001, asserts that the beneficiary is an ordained minister and "the overseer of the American Branches" of the petitioning ministry.

The director, in denying the petition, acknowledged the beneficiary's certificate of ordination but stated that the issuance of such a certificate is not definitive evidence that the person so ordained qualifies as a minister for immigration purposes. The director cited *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). That decision

concerned a "minister of music" whose duties did not involve the typical functions of ordained clergy. In this instance, the duties listed for the beneficiary appear to conform to the usual duties of ordained clergy. Leaving aside the separate issue of whether the beneficiary has actually been *performing* those duties, the duties described by the petitioner appear to be those of a minister for immigration purposes. We therefore withdraw this particular finding by the director.

The final issue raised by the director regards the petitioner's tax-exempt status. 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 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 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 includes an Exempt Organization Certificate, showing that the petitioner is "exempt from payment of the New York State and local sales and use tax." This document is not evidence of *federal* tax exemption.

The director instructed the petitioner to submit evidence to conform to the regulations cited above. As noted above, the petitioner did not submit such evidence within the time allowed. The petitioner's untimely response to that notice includes a copy of a letter, dated March 14, 2003, in which the Internal Revenue Service attests to the petitioner's qualifying tax-exempt status. As noted above, pursuant to *Matter of Soriano*, this untimely-submitted material shall not be considered on appeal. The petitioner did not make this material available to the director during the time permitted, and therefore the director did not err in failing to consider it.

Upon consideration of the record, we find that the director acted properly in denying the petition and in refusing to consider the petitioner's untimely, and therefore unacceptable, response to the request for evidence. If the director erred at all, it was in failing to deny the petition for abandonment, as set forth at 8 C.F.R. § 103.2(b)(13).

This decision is without prejudice to a new petition, filed with the appropriate fee and all necessary evidence, but it appears that additional documentary evidence would likely be necessary in order to establish eligibility.

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.