U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 01 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)

ON 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

for Robert P. Wiemann, Director
Administrative Appeals Office

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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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a health education and treatment facility affiliated with the Seventh-day Adventist (SDA) 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), to perform services as a lifestyle counselor and medical missionary lay evangelist. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition; (2) its ability to pay the proffered wage to the beneficiary; (3) that the position qualifies as a religious vocation as claimed; or (4) that it qualifies as a tax-exempt religious organization.

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 June 19, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the position offered throughout the two years immediately prior to that date.

John Champen, the petitioner's administrator and director of Human Resources, states "[o]ver the past two years, [the beneficiary] has been engaged in the vocation of a Lifestyle Counselor & Medical Missionary Lay Evangelist." Subsequently, Calvin E. Thrash III, president of the petitioning entity, has stated that the

beneficiary "has been working in a full-time capacity for more than two years, as a Seventh-day Adventist Medical Missionary (or Lifestyle Counselor). Our institute considers 'full-time' to consist of 38 or more hours per week." The beneficiary has worked for the petitioner under an R-1 nonimmigrant religious worker visa.

The director, in denying the petition, asserted that the petitioner had produced no evidence to support its claim to have continuously employed the beneficiary. On appeal, the petitioner submits copies of check stubs reflecting monthly stipend payments to the beneficiary throughout the qualifying period. This evidence is consistent with the petitioner's earlier claims, and overcomes the finding that there is no documentation of the beneficiary's past employment.

The beneficiary's claimed compensation, however, is not limited to nominal stipends. The petitioner must produce evidence (or credibly account for the absence thereof) to show that it has, as claimed, provided the beneficiary with room and board during the qualifying period.

The next issue concerns the petitioner's ability to pay the beneficiary's proffered wage. The petitioner indicates that, rather than a typical salary, the beneficiary receives "housing and a small stipend" of, on average, $650 per month. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

Prior to the denial, the petitioner had submitted a balance sheet, showing over $800,000 in current assets, with less than $19,000 in liabilities. The director found that this document did not meet the above evidentiary requirements. On appeal, as noted above, the petitioner has documented that it did, indeed, pay stipends to the beneficiary, typically $620 a month during the first year and $675 after that.

A memorandum from an official of Citizenship and Immigration Services (CIS) states: "CIS adjudicators should make a positive ability to pay determination . . . [when t]he record contains credible verifiable evidence that the petitioner . . . has paid or currently is paying the proffered wage." Memorandum from William R. Yates, Associate Director of Operations, *Determination of Ability to Pay under 8 CFR 204.5(g)(2)* (May 4, 2004). Here, the petitioner has done so, in terms of the monetary component of the beneficiary's compensation.

The appeal also includes a copy of the petitioner's 2000 Form 990 Return of Organization Exempt from Income Tax (a non-profit organization's functional equivalent of a tax return). This document shows over a million dollars in net assets. Corporate reports from subsequent years show no sudden reduction in assets, which appear sufficient to pay the beneficiary's nominal stipend and expenses for a considerable period of time. The petitioner has credibly documented its financial health, and that it has been paying the beneficiary the proffered stipend. In light of this material, the petitioner has overcome the director's finding regarding its ability to pay.

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

> *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.

John Champen describes the beneficiary's position:

> [T]he vocation of a Lifestyle Counselor . is peculiar to SDA, requiring specialized medical missionary training to use the spiritual and health principles advocated by our church since 1863. At the conclusion of a formal two-year training program, [the beneficiary] was ordained and set aside for this calling. . . .
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> As a Lifestyle Counselor, [the beneficiary] conducts morning or evening worship services, teaches and counsels members of the SDA Church and others who come to [the petitioning facility]. He teaches the biblical basis for healthful living and administers rational, natural treatments to help nature re-establish right conditions within the body. He is able to help his charges understand and appreciate how God's Word along with the natural elements and products of nature help restore and maintain spiritual and physical health. He also shares the understanding of the relationship and sympathies existing between the spiritual, mental, and physical components of the individual.
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> The duties of a Lifestyle Counselor evangelist are similar to those of a "catechist" and a Christian "nurse" combined, who uses natural remedies and prayer for healing of the body, mind, and soul.

Mr. Champen also provides a listing of the beneficiary's duties:

a. Morning or evening worship services for patients.
b. Patient care, including assisting the missionary physician with physical examinations and administering prescribe[d] natural treatments [such] as hydrotherapy, prayer, herbal teas, body works, fasting, etc…[Ellipsis in original.]
c. Patient lectures and education which include talks on "Stress Management," "Natural Remedies," no-cholesterol cooking classes, one-on-one patient counseling; spiritual support and teaching Bible topics.
d. Phone duties day or night, responding to calls for help from the sick and depressed leading them to know and to trust God.
e. Medical Conferences where the patient's progress is reviewed followed by accompanying the physician during visits and prayer with the patients.

f. Supportive duties as needed.

Following a request for evidence, the petitioner has provided still more detailed information, listing such functions as "health lectures" and "hydrotherapy/massage/herbal treatments." Letters from officials of the SDA Church and affiliated ministries affirm that the petitioning entity is a "supporting ministry" of the SDA Church. director of Health Ministries, North American Division, of the SDA Church, states that the adherents of the denomination "have taken health ministries seriously in our 160 year history."

The director denied the petition, citing examples from the beneficiary's work schedule and stating "[t]he petitioner has not demonstrated that such a schedule qualifies as a religious vocation under current regulations."

The director is correct that the petitioner has not shown the beneficiary's work to constitute a religious vocation, as the regulations define that term. The petitioner's assertion that the beneficiary has been "ordained" is not sufficient in this regard. Nevertheless, 8 C.F.R. § 204.5(m)(2) explicitly includes missionaries and workers in religious health care facilities as examples of qualifying religious occupations. In this instance, the beneficiary's work appears to be an amalgamation of these two duties. The director's apparent misgivings about the beneficiary's involvement with "cooking classes" are understandable, but the record indicates that the SDA Church emphasizes diet as an important part of "natural healing," and the church's teachings regarding health appear to be informed, at least in part, by church dogma rather than by empirical/scientific consensus widely accepted outside of the SDA church. The available evidence, therefore, is consistent with a finding that the beneficiary's position amounts to a qualifying religious occupation.

The final issue under consideration concerns the petitioner's tax exemption. 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.

According to documentation from the Internal Revenue Service, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (IRC), which pertains to churches, but rather under section 170(b)(1)(A)(ii) of the IRC, which pertains to educational institutions. The director, in denying the petition, acknowledged that "the IRS will grant tax-exempt status to organizations operated for religious purposes" under various sections of the IRC, but nevertheless stated that "[o]nly organizations classified, or classifiable, as a 'church' pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC are considered as relating to religious organizations for the purpose of special immigrant religious worker classification."

The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(ii) of the IRC derives primarily from its religious character, rather than from its status as an educational entity that happens to be affiliated with a religious organization. The petitioner can establish this by submitting

documentation which establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The documentation should also establish that the organization, when it obtained its tax exemption, represented itself to the Internal Revenue Services as a religious organization. *See* Memorandum from 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). Because many non-profit organizations are required by law to make their Forms 1023 available for public inspection, a request for the petitioner to produce such documentation would not be unduly burdensome.

The rather perfunctory request for evidence that the director issued on April 2, 2003, failed to address many of the above issues, and therefore the petitioner did not have the opportunity to address these points prior to the denial of the petition.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.