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: NEBRASKA SERVICE CENTER Date: OCT 0 8 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.

Marin Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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), to perform services as a priest. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition; (2) its tax-exempt status as a religious organizations; (3) the beneficiary's credentials as a minister; or (4) its ability to pay the beneficiary's proffered wage.

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
> >
> > (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 January 21, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a priest throughout the two years immediately prior to that date.

In a letter submitted with the initial filing, the petitioner's parish council president, states that the beneficiary was the petitioner's priest from 1967 to 1969, and has served in Toronto since that time. indicates that the beneficiary "recently retired" (the petition was filed shortly before the beneficiary's 69th birthday), and that the petitioner has invited the beneficiary to return to the petitioning church. states that, at present, the petitioning church "is holding services about once a month," under another individual who "is also a retired priest."

We note that, in a letter dated December 6, 2002, Ms. Zavichas informed the Metropolitan of the Greek Orthodox Diocese of Denver that the church desired to invite the beneficiary "for a limited stay" at the petitioning church. It is not clear how "limited" this stay is intended to be, or why permanent immigration benefits are necessary "for a limited stay" when there exists a nonimmigrant religious worker classification for just such a situation.

The director instructed the petitioner to submit evidence to show that the beneficiary worked continuously as a priest during the two-year qualifying period. Because the petitioner had claimed that the beneficiary had entered the United States on November 21, 2002, two months before the filing date, but the petitioner had failed to specify the beneficiary's nonimmigrant status, the director also requested evidence regarding that entry. If the beneficiary was in the United States from November 2002 to January 2003, and was not actively working as a priest during that time, then this significant gap would appear to interrupt the continuity of his work.

In response to the notice, the petitioner submits an unsigned and apparently incomplete letter, indicating that the beneficiary "has been continuously involved and employed as a religious leader and priest. . . . This is and always will be a full time endeavor." The petitioner submits no new evidence to corroborate this assertion. Colorado church officials assert that the beneficiary is in good standing with the church in Toronto, but the record contains nothing from the officials in Toronto to document the extent of the beneficiary's work during 2001-2003. Other documents indicate that the beneficiary "receives his monthly pension"; there is nothing to show when the beneficiary began to draw this pension (which indicates a state of retirement rather than active work). The petitioner did not address the director's request for evidence regarding the beneficiary's November 2002 entry into the United States.

The director denied the petition, in part because the petitioner had not established that the beneficiary had worked continuously throughout the qualifying period. On appeal, the petitioner repeats the claim that the beneficiary has worked continuously, but again the petitioner provides no supporting evidence. The petitioner asserts that the beneficiary received no I-94 departure record upon entering the United States (presumably because he was a Canadian resident entering from Canada). Thus, the record contains nothing to show that the beneficiary worked continuously throughout the qualifying period, and information to support the opposite conclusion (such as his presence in the United States without work authorization, and documentation that he is retired and receiving a pension).

The next issue concerns 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 contained no mention of the petitioner's tax-exempt status; the closest it came was when [redacted] asserted that the petitioner "is a member of the Denver Diocese" and thus a

member of the larger Greek Orthodox Church. A request for evidence yielded only a letter from a church official, attesting to the petitioner's qualifying exemption.

The director denied the petition, stating that the petitioner failed to provide the required evidence. On appeal, the petitioner submits a copy of a letter from the Internal Revenue Service, acknowledging the tax-exempt status of the Greek Orthodox Archdiocese of North and South America "and its affiliated Churches and Institutions." Metropolitan Isaiah of Denver asserts that the petitioning church is one of these affiliated churches. We see nothing in the record to impugn the credibility of these materials. The petitioner has, thus, submitted satisfactory evidence to establish its qualifying tax-exempt status.

Another issue in the denial concerns the beneficiary's qualifications. 8 C.F.R. § 204.5(m)(3)(ii)(B) states that, if the beneficiary is a minister, the petitioner must show that the beneficiary has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

The petitioner's initial submission includes a letter from Metropolitan Isaiah, presiding hierarch of the Diocese of Denver, who states that he "received a copy of a letter from Metropolitan Sotirios of Toronto regarding [the beneficiary], stating that he is in good canonical standing and may serve with the permission of the local bishop."

The director requested a copy of the beneficiary's certificate of ordination. In response, the petitioner has submitted a copy of the above letter from Metropolitan Isaiah, but no copy of the ordination certificate. This lack of evidence formed one basis for the director's denial. On appeal, the petitioner submits a copy of a letter from Metropolitan Sotirios of Toronto, dated August 7, 2003, indicating that the beneficiary "is a Canonical Ordained Priest since 1966, of the Greek Orthodox Metropolis of Toronto."

We note that the beneficiary became a lawful permanent resident of the United States in 1967, and subsequently abandoned that status when he relocated to Canada. The file containing the present record of proceeding also includes the documentation from 1967. That documentation includes a translation of a letter from Bishop Timotheos of Rodostolon, who stated that he ordained the beneficiary on November 22, 1966.

Thus, while the petitioner did not submit a copy of the beneficiary's ordination certificate, we cannot ignore that such a certificate has been in the beneficiary's alien file since 1967, and is now present in the same file as the record of proceeding. From the available documentation, there seems to be little doubt that the beneficiary is an ordained priest, and has been since 1966.

The final stated ground for denial relates to the petitioner's ability to pay the beneficiary's salary. 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.

Additionally, 8 C.F.R. § 204.5(m)(4) requires the petitioner to specify the terms of the beneficiary's proffered compensation. In this instance, the petitioner's initial submission contained no specific information about the beneficiary's salary or the petitioner's ability to pay it.

The director instructed the petitioner to "submit evidence that the religious organization has the financial capability to pay the beneficiary's wage." In response, the petitioner has submitted documentation showing that the beneficiary receives a pension, presumably from the Diocese of Toronto, which had employed him for over three decades.

The director, in denying the petition, observed that the petitioner had provided financial information pertaining to the beneficiary, but not to the petitioner. On appeal [redacted] states that the petitioner "will provide shelter, food, transportation, and other needs for [the beneficiary] during his visits to our community. We have and are prepared to continue to give [the beneficiary] a wage of $700.00 a month. . . . He also will be provided with all utilities at his lodging at the parish home." It is not clear wha[redacted] means when she refers to the beneficiary's "visits to our community," a phrase that suggests the beneficiary's occasional, rather than continuous, presence in that community.

The only financial documentation submitted on appeal consists of copies of two bank statements and a certificate of deposit, all in the name of the Hellenic Orthodox Community Association. This association shares the petitioner's post office box number, and [redacted] name appears on some of the bank documents, but this information does not establish or clarify what formal connection, if any, exists between the church and the Hellenic Orthodox Community Association.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, *audited* financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The evidence that the petitioner has submitted has no demonstrated relevance to the petitioner's ability to pay the proffered wage. The claim that the petitioner has already paid the beneficiary is entirely unsubstantiated.

While the record demonstrates that the beneficiary is an ordained priest and that the petitioning church has a qualifying tax exemption, the petitioner has not established that the beneficiary continuously worked as a priest throughout the two-year qualifying period, or that the church has the financial ability to pay the beneficiary's proffered wage and provide the other, non-monetary compensation offered. Because the petitioner has not overcome all of the grounds for denial, we affirm the director's decision.

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.