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

U.S. Citizenship and Immigration Services

[redacted]

OCT 10 2010

FILE: [redacted] Office: TEXAS 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

Robert P. Wiemann, Director
Administrative Appeals Office

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 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 program director. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a program director immediately preceding the filing date of the petition.

On appeal, counsel argues that the director failed to take into account the "special circumstances" of aliens who work in religious vocations.

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 April 4, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a program director throughout the two years immediately prior to that date.

[redacted] senior pastor of the petitioning church, states that the beneficiary "was ordained into the office of Program Director on Sunday the 11th of January 1998." [redacted] states "[t]he church will be paying [the beneficiary] $1,200.00 a month. We will also take care of his immediate needs. . . . He

will also be working 40 hours a week, Monday through Friday from 9:00 a.m. to 5:00 p.m." Pastor Akharamen does not indicate that the beneficiary already works those hours. The initial letter says nothing about the beneficiary's past experience except the above assertion that the beneficiary began working in January 1998.

The petitioner submits copies of church programs from before and during the qualifying period. These documents do not mention the beneficiary. The petitioner also submits copies of notes from church committee meetings from 1998 onward. The notes indicate that the beneficiary was present at the meetings, but they do not establish that the beneficiary worked full-time for the petitioning church.

The director instructed the petitioner to "[s]ubmit a detailed description of the beneficiary's prior work experience since April, 1999 including duties and hours." In response [redacted] repeats earlier, general assertions, but provides no further details about the beneficiary's past work. [redacted] states that the beneficiary "is not a salaried employee yet. . . . However, the church has taken the responsibility of feeding, accommodation, transportation, and [the beneficiary's] every other immediate financial need."

The director denied the petition, stating that the petitioner has not established that the beneficiary meets the two-year experience requirement. The director asserted that unsalaried work is not qualifying employment experience.

On appeal, counsel cites a previous, unpublished AAO decision, indicating "the special circumstances of some religious workers, specifically those engaged in a religious vocation, [who] may not be salaried in the conventional sense and may not follow [a] conventional work schedule." This argument is not applicable here, however. 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.

Arguments regarding the lack of salaries in religious vocations do not apply here; the petitioner has stated its intent to pay the beneficiary a salary of $1,200 per month. Counsel acknowledges this offer on appeal, but asserts that the amount offered is "a drop in the bucket," merely "a nominal salary to assist each Pastor to take care of basic necessities."

The record contains no evidence that the beneficiary is a member of a religious vocation, comparable to a monk, who has taken permanent vows of commitment to live in a religious order or similar community. Counsel's arguments are entirely unsubstantiated. The offer of a low salary is by no means *prima facie* evidence that the beneficiary is engaged in a religious vocation. The description of the beneficiary's job and working conditions is far closer to a religious *occupation* than to a religious *vocation*.

With regard to the beneficiary's unpaid status, the absence of a monetary salary is not automatically disqualifying. The Board of Immigration Appeals (BIA) has ruled that a religious worker who received compensation in the form of room, board, and a stipend, rather than an hourly salary, was "employed" for the purposes of immigration law (including the legal consequences of unauthorized employment). *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982).

While the beneficiary's non-monetary compensation is not disqualifying, it remains that the petitioner has provided almost no information about the beneficiary's experience during the qualifying period, even after the director explicitly instructed the petitioner to provide "a detailed description of the beneficiary's prior work experience since April, 1999 including duties and hours." The mere assertion that the beneficiary "was ordained into the office" in January 1998 does not provide the requested information, nor does it explain the petitioner's failure to provide it. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14). The petitioner's failure to provide necessary information about the beneficiary's experience had precluded a material line of inquiry, i.e., the question of whether the beneficiary accumulated the required experience during the two-year qualifying period.

The question of the beneficiary's hours worked is material because part-time religious work is not qualifying. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), in which the BIA determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. It cannot suffice simply to attest that the beneficiary first assumed his duties more than two years before the filing date. Furthermore, if the beneficiary worked in any secular employment during the qualifying period, such work would interrupt the continuity of his religious work. The term "continuously" has been interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). The petitioner has not provided sufficient information to rule out disqualifying secular employment.

The petitioner has not demonstrated that the beneficiary was continuously engaged in a religious occupation during the 1999-2001 qualifying period. Therefore, the petition cannot be approved, and we affirm the director's denial of the petition.

We note that the director had inquired as to the number of paid workers employed by the petitioner, and the number of immigration petitions filed by the petitioner. [redacted] indicates that the church has four paid workers, and that it has filed religious worker petitions on behalf of over a dozen aliens. Given the very significant volume of petitions, when compared to the much smaller number of paid workers, it is reasonable to expect persuasive evidence to establish that *bona fide* positions are available for all these workers, and that the petitions are not merely a means for the petitioner to secure immigration benefits for aliens. Several beneficiaries of approved petitions have already left the petitioner's employ, which does not readily dispel the impression that the petitions filed on their behalf were primarily intended to augment the petitioner's own ranks, rather than to obtain benefits for the alien beneficiaries.

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.