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: OCT 29 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:

[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

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 the headquarters of a Christian denomination. 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 an associate editor for publishing. The director determined that the petitioner had not established that the position qualifies as a religious occupation, or that the beneficiary had the requisite two years of continuous work experience in a qualifying religious occupation.

On appeal, the petitioner submits copies of previously submitted materials, and arguments from counsel.

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;
>
> (ii) seeks to enter the United States--
>
> > (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 first issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The

regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The regulation reflects 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.

who heads the petitioner's Publishing Department, states that the petitioner seeks to employ the beneficiary as "an Associate Editor for Publishing at our headquarters. . . . This position is a traditional religious function." Mr. describes the position:

> The Associate Editor for Publishing position ensures that all text produced for the monthly flagship magazine, "The Philadelphia Trumpet," is edited to conform to the doctrines, teachings, traditions and practices of the [petitioning church], is factually correct and linguistically sound. It is imperative that the Associate Editor for Publishing possess a demonstrative understanding of church doctrine, teaching, traditions and practice including an extensive understanding of international affairs, incorporating a comprehension of global geography, cultural variations, politics and customs of nations, in particular, Britain, Australia, Canada, Europe and Africa. Highly developed research skills in a publishing environment, and English language proficiency, including a working knowledge of idioms in vogue in English-speaking countries, [are] also necessary.

A separate document states "[t]he tasks required of the Associate Editor for Publishing are specifically, but not limited to, the following:"

1. Research of source material for staff writers.
2. Editing of articles written principally for the Philadelphia Trumpet magazine and, in addition, all other publications produced by the [petitioner], including but not limited to other magazines, bi-monthly newspaper, booklets, and literature published on behalf of the Philadelphia Foundation, Imperial College and Festival Department, and in the process:
    a. Rewrite selected text for [the petitioner's] publications.
    b. Check and verify all facts to ensure corrections, appropriate use, and sources credited.
    c. Crosscheck all facts against original source material and additional reliable sources.
3. Proofread all edited copy prior to submission for printing.
4. Write selected articles for quarterly youth magazine, "True Education"
5. Write selected articles for the bi-monthly "Philadelphia News" church newspaper.

The petitioner submits an affidavit from of the Institute for the Study of American Religion, who asserts that, from the petitioner's perspective, "the actual publication of the gospel (that is, placing the message into print) is a central obligation of their faith. . . . In this situation, the role[s] of Editor, Associate editor, etc., take on a sacred significance above and beyond that assigned in some other churches." Dr. concludes that he is "of the opinion that Associate Editor for publishing . . . is a traditional religious function" in the petitioner's denomination.

The director instructed the petitioner to provide additional evidence to establish that the position offered to the beneficiary qualifies as a religious occupation for immigration purposes. In response, the petitioner has submitted another version of the beneficiary's job description, indicating that the beneficiary's position consists primarily of research, editing, fact checking and proofreading, in addition to writing for church publications other than *The Philadelphia Trumpet*.

The director denied the petition, stating "the proffered position predominantly involves secular, administrative, and clerical duties." On appeal, counsel refers to previous submissions, and asserts that the petitioner has satisfactorily established the religious nature of the beneficiary's position.

When considering the question of whether a given position relates to a traditional religious function in the denomination, we must take into account the particulars of the denomination. In this instance, the petitioning denomination has existed for less than twenty years, having split with its parent organization over doctrinal differences in 1989. That parent organization, in turn, is also of relatively recent origin (1934). While the denomination is "Christian" in the sense that its doctrines derive from the New Testament of the Bible, there are also significant doctrinal differences from mainstream Christianity, as documents in the record show.

A history of the petitioning church, published in one of the church's many publications, indicates that one of the church's principal missions is to proclaim its interpretation of the gospel through the mass media, including television, the Internet, and print media. This corroborates the petitioner's assertion that "[t]he main thrust of the church's commission is borne by its publishing department." Furthermore, the description of the beneficiary's duties indicates that the beneficiary exercises considerable responsibility for the content of the published material; she is not merely proofreading or laying out copy. This, combined with the denomination's strong emphasis on publication, appears sufficient to establish that the beneficiary's work relates to a traditional religious function within that denomination.

The above finding, however, does not definitively settle the matter of the beneficiary's eligibility. We must also address the issue of the beneficiary's past experience. 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 May 7, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an associate editor throughout the two years immediately prior to that date.

The earliest documentation of the beneficiary's employment indicates that her "full-time salaried employment in the capacity of *Secretary* dates from Thursday 21 April 1994" (italics in original). [redacted] states that the beneficiary "was transferred to our headquarters in Edmond, Oklahoma, in September 1998 as an R-1 Regional and Research Assistant." Documentation from the beneficiary's personnel file indicates that the beneficiary worked as an "Admin. Asst." from 1998 until, at the earliest, 2001. M[redacted] states that the beneficiary's "duties over the past four years have entailed handling very sensitive and confidential personal information resulting from an intimate involvement by her in many areas of religious, marital and family counseling sessions between the Pastor General, the national and international ministry and church members."

The director requested evidence to show the beneficiary's experience during the two-year qualifying period. In response, Mr asserts that the beneficiary has been "performing the duties of Associate Editor for Publishing for essentially the past five years. . . . She has performed editing functions for the church since her initial entry into the US" in 1998. He acknowledges that the beneficiary "was initially employed . . . as a Regional and Research Assistant to the Pastor General," but he asserts that "her duties were those of editing. The church places less emphasis on title and more focus on actual occupational job duties." Mr states:

> Her occupational duties throughout the last five years include: research of source material for staff writers; editing and proofreading of articles written for the church's flagship magazine, the Philadelphia Trumpet . . . the church's religious instruction magazine, Royal Vision . . . the church's magazine for youth, True Education . . . the church's newspaper, the Philadelphia News . . . [and] all other literature produced by the church, including books, booklets and material published on behalf of the Philadelphia Foundation, Imperial College and the Festival Department; in the process of editing of articles, rewriting selected text and revising text . . . ; making recommendations and decisions on use or rejection of submitted articles; writing of selected articles for various [church] publications . . . ; checking and verifying of facts included in articles, in the process cross-checking against original source material and additional reliable sources; liaising between writer and Publishing Department on submitted articles; providing biblical and doctrinal research assistance for the Pastor General and ministry.
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> During her employment with the church, [the beneficiary] has processed confidential personal information resulting from an intimate involvement by her in many areas of religious, marital and family counseling sessions between the Pastor General, the national and international ministry and church members. She has performed doctrinal and news research for church publications, editing, redrafting and writing articles for publication in the Philadelphia Trumpet magazine and other church publications, verification of facts and doctrinal statements in church publications and proofreading of all church publications prior to printing. . . .
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> In summary, [the beneficiary] has essentially been performing the duties of Editor for Publishing for the past five years. Although the job titles within the church may change administratively, the job duties which [the beneficiary] has performed for the past five years have basically remained the same.

Mr iginal description of the beneficiary's *past* work made no mention of editing or writing; that description was highly divergent from the description of the beneficiary's intended *future* duties.

The petitioner submits sample issues of various church publications from the past several years. The beneficiary's tasks vary from title to title. These publications credit the beneficiary as a church news editor for the *Philadelphia News* in 2002 and 2003, contributing editor and author for *True Education* in 2001 and 2003, a proofreader for *Royal Vision* in 2001 and 2003, and a contributing editor of *The Philadelphia Trumpet* in various issues going back to December 1999, with her title listed as associate editor as early as the August 2001 issue. Most of the issues are from 2003, with earlier years represented by only one or two issues.

The publications submitted do not establish *continuous* activity as an editor. The petitioner has submitted copies of the beneficiary's 2001 and 2002 federal tax returns. On her 2002 return, the beneficiary listed her occupation as "editor." In 2001, however, she identified herself as a "secretary." On both returns, she

indicated that she had prepared the tax forms herself, definitively ruling out third-party error as an explanation for the terms chosen.

The director concluded that the petitioner had not met the requirement of continuous religious work during the qualifying period. On appeal, counsel asserts that the petitioner has presented "ample evidence . . . that the beneficiary has been continuously employed in a religious occupation for the past five years."

Certainly, the petitioner has submitted persuasive evidence of the beneficiary's continuous occupation since well before the qualifying period began. Nevertheless, the petitioner has not shown that the beneficiary's duties were *primarily* editorial during the two-year qualifying period (a period in which the petitioner's own documents refer to the beneficiary as an "administrative assistant" or "regional and research assistant"). Even within the publishing area, the beneficiary was not an editor for all of the publications. *Royal Vision* credits the beneficiary only as a proofreader, a position that exercises no substantive control over published content. Clearly, the petitioner does not employ the beneficiary *solely* as an assistant editor, and thus it cannot suffice to establish that the position of an assistant editor is a qualifying religious occupation.

Furthermore, we note the publication schedules of the petitioner's publications. The most frequently published is *The Philadelphia Trumpet*, which, according to the petitioner, appears ten times a year. Other publications appear less frequently, four or six times a year. The *Philadelphia News*, described as a newspaper, is an eight-page broadsheet published once every two months. The petitioner has not shown that the production of these periodicals has provided, or will provide, full-time editorial work.

Given the relative infrequency of the petitioner's publications, it is indeed significant that, in 2001, the petitioner described the beneficiary as an "administrative assistant," and the beneficiary described herself as a "secretary." Counsel protests that these descriptions are not adequate grounds for denial, but he provides no credible basis for ignoring this information. The petitioner originally indicated that the beneficiary *had been* essentially a secretary, and *will be* an editor. Only after the director raised questions did the petitioner amend this description, to indicate that the beneficiary had already performed editorial duties. The publications in the record are persuasive evidence that the beneficiary has, *at times*, acted in an editorial capacity, but during 2001 and 2002, both the petitioner and the beneficiary considered the beneficiary to be first and foremost an administrative worker rather than an editor.

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 term "continuously" is also discussed in a 1980 decision where the Board of Immigration Appeals 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. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Following these standards, the beneficiary was not *continuously* working as an editor in 2001-2003 if a significant proportion of her duties consisted of other tasks. Here, the petitioner has repeatedly asserted that the beneficiary performed a variety of non-editorial tasks during that period, which is entirely consistent with tax documents and internal church documents that refer to the beneficiary by some title other than "editor" or "associate editor." Occasional or intermittent editorial duties are not "continuous" and, therefore, are not qualifying.

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.