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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 03 2005
SRC 01 173 51841

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On motion, counsel argues that the CIS position that voluntary service is not qualifying employment for purposes of the two-year continuous employment requirement is not based on statute or regulation. Counsel also asserts that the regulation does not require that the beneficiary be solely carrying on the work during the qualifying two-year period.

As discussed in the AAO's previous decision, prior case law and the intent of Congress make it clear that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

Further, in the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

According to counsel, the petitioner "has been able to support herself in the United States because among other things, she brought monies from her own funds of [sic] Colombia, and her father also sent her monies. This has been able [sic] her to purchase an[] apartment where she is presently residing. She has also receive[d] monies [sic] contributions from friends who help[] her for the spiritual assistance she offers them." As evidence, counsel submitted a copy of a 2000 warranty deed for a condominium that the petitioner bought in Miami, Florida. The petitioner also submitted a copy of a Western Union receipt reflecting that the beneficiary received $6,657.00 fro[redacted] and statements from three individuals who stated that they either gave the petitioner money or distributed charitable contributions from others to her. The record does not reflect the frequency of these contributions or the amount that the petitioner received. The petitioner submitted no evidence of the personal funds she used to support herself.

Counsel submitted a copy of what appears to be a bank statement. However, the document is not accompanied by an English translation. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. §

103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

According to counsel, the petitioner's prior work experience was as a volunteer for more than half of the required statutory two-year period. However, the evidence submitted is insufficient to demonstrate how the petitioner supported herself financially during the qualifying two-year period or to establish that she was not dependent upon secular employment for her support during the qualifying period.

The evidence submitted by the petitioner is insufficient to establish that she has been continuously employed in a religious vocation or occupation for two full years prior to the filing of the visa petition.

Furthermore, the petitioner failed to address the other deficiencies in the petition noted by the AAO in its prior decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As no new evidence has been presented to overcome the grounds for the previous dismissal, and no reasons set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of April 14, 2004 is affirmed. The petition is denied.