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

U.S. Citizenship and Immigration Services

[redacted]

C1

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 0 4 2005

IN RE: Petitioner: [redacted]

Beneficiary: [redacted]

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:

PUBLIC COPY

[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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an "interdenominational organization" whose purpose is to "train Korean-American Christian education leaders on the special issues involved in pastoring Korean American youth and teenagers." The petitioner 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 its director. The service center director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization.

On appeal, counsel submits a brief and additional documentation.

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,
> >
> > (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
>
> (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)(3)(i) states, in pertinent part:

> (3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:
>
> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 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

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

The petitioner submitted a January 30, 2002 advance ruling letter from the Internal Revenue Service (IRS), informing the petitioner that it had been granted tax-exempt status as an organization as described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code (IRC). The advance ruling period is scheduled to expire on December 31, 2004. The petitioner also submitted a copy of its articles of incorporation and a copy of IRS Form 872-C, Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code. The director determined that the petitioner had not established it was a bona fide religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i) in that it had failed to establish it held tax-exemption under section 170(b)(1)(A)(i) of the IRC.

On appeal, counsel argues that the Citizenship and Immigration Services (CIS) interpretation of the statute is erroneous in that the statute and regulation also apply to religious organizations other than churches. Counsel quotes a conversation that counsel allegedly held with an IRS agent. Counsel states, "The IRS does not make a determination as to whether or not an organization is religious." Counsel provides no transcript or other evidence of this conversation and does not provide the name of the agent. It is unclear whether the quoted statement is that of the unnamed IRS agent or counsel's interpretation of the regulation. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the IRS is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under § 501(c)(3) of the IRC of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement (if applicable) which applies to churches, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

On appeal, counsel submits letters from [redacted] Associate Director of Operations for CIS, and [redacted] associate counsel in the CIS Adjudications Law Division. These letters clarify the documentary evidence needed as an alternate method of proving tax-exempt status as a religious organization when the petitioning entity does not have a letter from the IRS specifically granting tax-exempt status as a religious organization.

Although acknowledging the alternative means of proof, counsel failed to submit all of the evidence required by the regulation and as set forth in [redacted] memorandum. The petitioner failed to submit a completed IRS

Form 1023, and the accompanying documentation required by the IRS to be submitted with the form. The evidence of record does not establish that it has tax-exempt status as a religious organization.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The petitioner submitted a March 17, 2003 letter from the pastor of Church in Seoul, Korea, describing the positions and job duties of the beneficiary over a period of approximately 18 years. The petitioner submitted no other evidence, such as pay vouchers or canceled checks, to corroborate the beneficiary's employment at the Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). This deficiency is an additional ground for dismissal of the appeal.

The petitioner also failed to establish that it has the ability to pay the beneficiary the proffered wage. 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.

The petitioner states it will compensate the beneficiary with an annual salary of $32,000. The petitioner submitted a May 7, 2003 statement from its bank. The statement indicates the date that the petitioner opened its two accounts at the bank and the balance as of the date of the letter.

The above-cited regulation 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. This failure constitutes an additional ground for dismissal of the appeal.

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.