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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 21 2005
LIN 03 097 51139

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, 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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous membership in the petitioner's religious denomination immediately preceding the filing date of the petition.

On appeal, counsel argues that the churches where the beneficiary has worked are, essentially, members of a common denomination. The petitioner submits various background documents intended to support this conclusion.

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 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)(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. The petition was filed on February 3, 2003. Therefore, the petitioner must establish that the beneficiary joined the petitioner's denomination no later than two years immediately prior to that date.

The beneficiary entered the United States November 12, 2002, and thus spent most of the two-year qualifying period outside the United States. Prior to his entry into the United States, the beneficiary worked at Verbo Christian Ministries in Guatemala.

8 C.F.R. § 204.5(m)(2) defines "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious

worship, religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

The director instructed the petitioner to "submit evidence to establish that [the petitioner] and Verbo Christian Ministries . . . belong to the same religious denomination." The director then listed elements from the regulatory definition of "religious denomination," cited above.

In response, the petitioner has submitted a letter from Rev. vice president of Verbo Christian Ministries, who states:

> Verbo Christian Ministries, Inc. is a family of approximately 70 Spanish speaking churches in North, Central and South America. . . .
>
> An International Council governs Verbo Ministries at the highest level. The next level consists of Regional Councils for each of North, Central and South America. Then each of the local churches has their own council. . . .
>
> Verbo Ministries is of the non-denominational charismatic evangelical tradition of Christianity and shares the same beliefs, governmental structure and type of worship as other such churches. Over the years we have developed good working relationships with many other Christian churches and organizations. . . .
>
> One of these churches is [the petitioner]. . . .
>
> We share the same faith, practices and goals and are completely at home whenever members of our congregations visit one another.

Scott Kalevik, pastor of the petitioning church, states in an affidavit:

> [The petitioner] and Verbo Christian Ministries/Iglesia Cristiana Verbo share the same denomination, namely, both entities are Non-denominational entities. Both entities have accepted the Bible as their sole source and authority. . . . Both entities concur that the Bible does not mandate the establishment of denominations and, therefore, both have chosen to be non-denominational. However, due to the fact that both entities adhere to the same source of instruction (The Bible), both entities share a basic unity in doctrine, beliefs, ecclesiastical government, worship, discipline, religious services and ceremonies. . . .

Pastor cites the web addresses for the two churches' respective statements of doctrine (http://www.elivinghope.org/beliefs.htm and http://verbo.org/site/statement/.htm) and submits copies of those statements. Pastor asserts that "both [churches] believe the same basic doctrines." Pastor also asserts that each church is governed by a board of trustees and a board of elders, although the two entities are not governed by the *same* board of trustees or board of elders.

Pastor states that worship services at both churches "contain the same elements, namely, prayer, preaching, praise singing, offering and invitation to serve," and that both churches derive their code of discipline from Matthew 18:15-20, which governs dispute resolution within the church. Finally, Pastor

states that both churches celebrate Christmas and Easter, offer communion, perform weddings and baptisms, and so on.

The director denied the petition, stating that the similarities between the two churches, as described by Pastor are fairly general and are shared by a broad variety of Protestant Christian churches, including distinct denominations.

On appeal, counsel asserts that the director's reasoning "is a violation of the Establishment Clause of the U.S. Constitution, as well as a violation of its own regulations." The AAO has no jurisdiction to decide Constitutional questions. We do note that, while the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Counsel observes that the regulatory definition of "religious denomination" includes inter-denominational religious organizations, and counsel contends that the director never drew a clear "distinction between 'inter-denomination' and 'nondenomination." Counsel argues, "[t]he terms 'interdenominational' and 'nondenominational' are synonyms for the word 'nonsectarian,' which means not restricted to one sect or school or party. . . . It is common to use the words 'nondenominational' and 'interdenominational' interchangeably." Counsel argues, in effect, that nondenominational churches must, by regulation, be treated as inter-denominational organizations.

Counsel's argument is flawed, because the regulation at 8 C.F.R. § 204.5(m)(2) refers to "an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986." Thus, in order to invoke the inter-denominational organization clause, the alien must have been a member of a *single* (hence the verb "is" rather than "are"), actual, organized entity recognized by the Internal Revenue Service. There is no single entity, recognized by the Internal Revenue Service, that encompasses both the petitioning church and Verbo Christian Ministries.

As counsel repeatedly observes, the supplementary information published with the special immigrant religious worker regulations at 56 Fed. Reg. 60901 (November 29, 1991) offers a single example of an inter-denominational religious organization: the Billy Graham Evangelistic Association. Counsel has not explained how the petitioning church and Verbo Christian Ministries jointly constitute any distinct entity that would be comparable to the Billy Graham Evangelistic Association. The churches' decision not to align themselves with any established denomination does not mean that every church that has made such a decision is, by default, a member of a "nondenominational," and therefore "inter-denominational," religious organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986. There are no formal, organizational ties between the petitioner and Verbo Christian Ministries, and therefore the "inter-denominational organization" clause does not apply. If anything, to equate the terms the terms "nondenominational" and "inter-denominational" suggests that *each* nondenominational church represents its *own* "religious denomination," and therefore to move from one such church to another represents a change of religious denomination.

We note Rev. assertion that "Verbo Christian Ministries, Inc. is a family of approximately 70 Spanish speaking churches in North, Central and South America." This arguably establishes Verbo Christian Ministries as its own small denomination, with dozens of subordinate member churches formally tied to one another, all answering to a common central authority (or "ecclesiastical government").

It remains that the common points of doctrine and practice (such as belief in the Bible, election of boards of trustees, and celebration of Christmas) are vague and non-specific, and do not readily differentiate the churches from any of a number of Protestant denominations. The petitioner has not overcome the director's stated grounds for denial of the petition.

Beyond the decision of the director, we note that the petitioner's letterhead indicates "[w]e meet each Sunday at North Middle School." Because this venue is a public school, it would appear very unlikely that the building's facilities are available to the petitioner full-time. On state documentation, the petitioner has listed "the location of its principal office" as a post office box, rather than any actual, physical location. There is no apparent indication that the petitioner has any premises of its own, under the control of the petitioning entity rather than one specific official thereof. Therefore, there is no indication of where the beneficiary would actually work during the majority of any given week, or where he would perform ministerial services (such as weddings) in the absence of available church facilities. Absent this information, it is not clear that a *bona fide* opportunity for permanent, full-time employment exists. We also note that 8 C.F.R. § 204.5(m)(2) includes "established places of religious worship" among the "indicia of a *bona fide* religious denomination."

Also, we note that 8 C.F.R. § 204.5(g)(2) requires the petitioner to demonstrate its ability to pay the proffered wage, by submitting evidence either in the form of copies of annual reports, federal tax returns, or audited financial statements. This ability must be established from the filing date through the date of adjustment of status. In this instance, the petitioner has demonstrated roughly three months of payments to the beneficiary, ending in February 2003, with no evidence of the petitioner's continued ability to pay the beneficiary after that time.

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.