D1

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

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 02 109 52018 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary

DEC 1 0 2004

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.

for

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

The petitioner is an "educational, charitable and religious agency." 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 its parish services director. The director determined that the petitioner had not established that the beneficiary is qualified for the position within the petitioning 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 petitioner stated that the beneficiary is an "extensively trained lay pastoral worker" whose duties in the proffered position are primarily those of helping the parish priest in carrying out his responsibilities. Those duties, according to the petitioner, are to assist in the planning and implementation of traditional religious parish programs and related duties, provide leadership and direction in the areas assigned to her by the pastor (such as evangelism, worship and religious education), act as liaison between the pastor and parish organizations as directed by the pastor, and assist in preparing the agenda and prayers for parish staff meetings. The job description indicates that someone with a master's degree in theology or religious studies is preferred for the position but that "[e]quivalency in experience may be considered."

The petitioner stated that the beneficiary has worked for the petitioning organization performing the duties of the proffered position since December 2001. The petitioner submitted no other evidence to corroborate the

beneficiary's employment with it. 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).

In a December 10, 2002 letter, [redacted] the superior and coordinator of the [redacted] stated that the beneficiary was employed by the organization from October 1992 to December 200[redacted] stated that the beneficiary's primary function was to support and assist the pastor "in the daily pastoral care of the faithful, and to [assist] him in the [planning] and implantation of Parish programs and activities." No evidence, such as canceled paychecks or pay vouchers, was submitted to substantiate the beneficiary's employment with the [redacted] *See Matter of Treasure Craft of California, id.*

The evidence reveals that the beneficiary does not meet the educational requirements set by the petitioner. The record contains copies of certificates indicating that the beneficiary completed several courses in theology and other religious oriented courses during the 1980s and early 1990s and that she has a bachelor's degree in science. In a June 28, 1999 letter [redacted] of the [redacted] in Brazil, stated that the beneficiary had worked full time with the church from 1996 to 1998 as "[P]astoral [M]inister of Youth [redacted] of sick people, bringing them the [redacted] and comfort. She earned her degree in Theology from our [redacted] course for Lay people and received from our Archdiocese the Degree in Religious Education."

Although the petitioner indicates that experience can substitute for education, the evidence submitted is insufficient to establish that the beneficiary has any work experience. Therefore the evidence is insufficient to establish that the beneficiary is qualified for the position within the organization.

Beyond the decision of the director, the petitioner has not established 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. This deficiency is an additional ground for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation 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."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) 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 February 6, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

As discussed above, the petitioner provided no contemporaneous evidence, such as canceled checks or copies of the beneficiary's IRS Form-W2, Wage and Tax Statement, to corroborate the statements of the petitioner or those of [redacted] f the [redacted] the Sacred Heart Church regarding the beneficiary's employment with these institutions. Without documentary evidence, these unsupported statements are insufficient to meet the petitioner's burden of proof. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190.

Additionally, the petitioner has 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 indicates that it will pay the beneficiary $24,000 per year. As evidence of this requirement, the petitioner submitted a "Pastoral Care for Migrants and Refugees Budget Reporting Form" for fiscal year July 1, 2002 to June 30, 2003.

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 deficiency is 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.