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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

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 09 2005
WAC 00 188 51855

IN RE: Petitioner:
Beneficiary: [redacted]

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:

SELF-REPRESENTED

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 Director, California Service Center initially approved the special immigrant religious worker petition. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and exercised his discretion to revoke the approval of the petition on October 27, 2004. The petitioner filed an appeal to this decision, and the petitioner's timely appeal is now before the Administrative Appeals Office (AAO) for review. The AAO will dismiss the appeal.

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, 8 U.S.C. § 1153(b)(4). The director determined that the petitioner had not established (1) that the beneficiary seeks to enter the United States for the purpose of carrying on a religious vocation or religious occupation; and (2) that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition; and (3) that the position qualifies as a religious occupation; and (4) the ability to pay the beneficiary's wage; and (4) the beneficiary will not be dependent on supplemental income.

On appeal, the petitioner provides a statement with additional documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The [Secretary of Homeland Security] may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime* . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987).)

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.* at 590. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

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 first issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(III) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(III), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, because the beneficiary entered the United States as an F-1 nonimmigrant student, the director concluded that the beneficiary did not enter the United States for the purpose of performing religious work.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant,* either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks* to enter," which describes the entry as a future act. We, therefore, withdraw this particular finding by the director.

The next issue relates to 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 June 8, 2000. Therefore, the petitioner must establish that the beneficiary was continuously performing essentially the same duties as the duties of the proffered position for the two years immediately prior to that date.

In a letter submitted with the petition at the time of filing, [redacted] Bishop of the petitioning church, states that the beneficiary "has been a member of our church for the past two and a half years and has served in the capacity of Secretary for the Sister Disciple Home which is part of the administrative body of the disciple home." [redacted] adds that the beneficiary is "a member of the church choir, a resident of the disciple home, and is leader on the intercessory prayer team."

The petitioner did not indicate whether the beneficiary's work was full-time or whether she was compensated for her work.

Given the lack of evidence submitted, on September 22, 2000, the director requested further evidence to establish the beneficiary's experience during the requisite two-year period. In response to the director's request, [redacted] submitted a second letter, dated December 6, 2000, in which he states:

> WORK HISTORY
>
> * * *
>
> The number of hours worked is 20-30 hours per week depending on the activities and programs of the church. [The beneficiary] will be directly responsible to the Bishop for all activities performed.
>
> EMPLOYMENT HISTORY
>
> [The beneficiary] started working in the church in December 1997. Initially she worked in the choir as a member, then proceeded to work in the Sister Disciple Home as the secretary. She is currently both in the choir and overseeing the intercessory unit of the church through the Disciple Home.
>
> MEANS OF SUPPORT
>
> * * *
>
> [The beneficiary] has received subsidized housing from the ministry and has open access to all ministry services.

The director approved the petition on January 17, 2001. Following the approval of the visa petition, the beneficiary applied for adjustment of status on March 23, 2001. On the Form G-325A, submitted with the petitioner's application for adjustment of status, when asked to list her employment for the last five years (March 14, 2001-March 14, 1996) the petitioner indicated "none." In the documentation submitted in support of the application, the record contains two letters from [redacted] describing the beneficiary's work experience and remuneration.

In a letter dated, October 26, 2002 [redacted] states the beneficiary:

> [H]as been employed by our ministry since December 1997. Her position is Leader of the Intercessory Prayer group in the Sister Disciple Home . . . currently she is remunerated $1,200 . . . monthly based on a full time service.

In a letter dated November 20, 2002 [redacted] indicates that the petitioner received:

> [S]ubsidized housing from December 1997 to September 1999 and that the rent was $435.00, and utilities averaged $150 per month including gas, electricity, and phone. There was a monthly household contribution of $30 for common supplies and miscellaneous items. [$13,630.00] is the total value monetarily.

Although the petitioner submitted pay stubs for February and March 2002 and evidence that the beneficiary received a salary of $3600 for the quarters ending in July 2002 and October 2002, and $1200 for all of 2001, the record contains no evidence to support a finding that the beneficiary was remunerated prior to 2001. The record also contained no evidence to corroborate the assertion that the beneficiary worked on a full-time basis. In fact, a Form W-2 attached to the beneficiary's 2001 Form 1040 shows she was paid $13,508.55 for an employer in Houston. On her 2001 Form 1040, the beneficiary lists her occupation as "intern."

The director issued a notice of intent to revoke the approval of the petition on June 21, 2004. The decision to revoke approval of the petition was issued on October 27, 2004.

On appeal, [redacted] argues that the petitioner received ineffective assistance from the attorney that formerly represented the petitioner.[1] [redacted] states that he has "never received any mails directly" and that former counsel failed to "timely communicate" with him. We note that both the notice to revoke the petition, as well as the final revocation, were both addressed to the petitioner, care of [redacted] California [redacted] with copies of said decisions also being mailed to former counsel. This is the same address listed on the letterhead of [redacted] letter on appeal.

Regardless, in order to make a claim based upon ineffective assistance of counsel, the petitioner must establish: (1) that the claim is supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned has been informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflects whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). These requirements have not been met by the petitioner in this instance.

[redacted] also argues that 8 C.F.R. § 204.5(m)(1) "was not a requirement" at the time the petitioner filed the petition. [redacted] does not elaborate on this statement and provides no supporting documentation to support his argument. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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[1] The attorney of record for the petitioner's Form I-360 petition, as well as the beneficiary's adjustment of status application, is listed as [redacted] Although the record does not contain any record that Ms. [redacted] formally withdrew her representation, the appeal has been filed by the petitioner without any indication of representation by counsel. In fact, [redacted] indicates in a letter dated November 9, 2004, that Ms [redacted] is no longer representing the petitioner.

[redacted] then argues as "the filing preceded the law," the prior approval of the beneficiary's R-1 nonimmigrant visa qualified the beneficiary for approval. The Bishop's assertion regarding the prior approval of the beneficiary's nonimmigrant visa also cannot be supported. There is a significant difference between nonimmigrant R-1 visa classification, which allows an alien to enter the United States temporarily, and an immigrant I-360 visa petition, which permits an alien to apply for permanent residence in the United States, which in turn, if granted, allows the alien to apply for naturalization. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427. Because the eligibility requirements for each petition are different, the fact that the beneficiary may have had a prior nonimmigrant visa petition approved on her behalf, does not relieve her from meeting the evidentiary and eligibility requirements of the instant petition.

As it relates to the beneficiary's employment during the requisite two-year period [redacted] reiterates the fact that the beneficiary began working for the petitioner in December 1997. [redacted] further contends that the beneficiary's position was not a voluntary position as evidenced by "[p]ay stu[b]s and W2 form," "subsidized housing," and the fact that she had "access to all ministry services/benefits such as: doctor's visit, transportation and clothing." While *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982), indicates that religious work can count as "employment" even if the compensation took the form of room, board, stipends, etc., rather than a fixed hourly salary, in this instance there is no documentary evidence to corroborate the petitioner's assertion that it provided for the beneficiary, and therefore the beneficiary was not an uncompensated volunteer. As previously noted, the petitioner's unsupported statements do not meet the burden of proof in this proceeding. *Matter of Soffici* at 158, 165 (citing *Matter of Treasure Craft of California* at 190).

In addition to the lack of evidence relating to the beneficiary's compensation, we do not find the record establishes the beneficiary's work amounted to full-time work. In [redacted] December 6, 2000 letter, he indicates that the beneficiary's work totals "20-30 hours per week." In a separate document, the petitioner provides a breakdown of the beneficiary's *activities* with the church but fails to provide an actual breakdown of the *duties* carried out by the beneficiary. Part-time employment is not continuous religious work. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

On appeal, [redacted] claims that the "position prior to being filled was advertised for 20-30 hours. But when it was actually filled, we found out that it required at least 40 hours." [redacted] then claims that the beneficiary has "more than fulfilled" the 35-40 hour per week full-time requirement but provides no details related to the beneficiary's duties or how they encompass 35-40 hours per week.

While the evidence in the record establishes that the petitioner has provided remuneration to the beneficiary for services *after* the filing of the petition, the information and evidence provided by the petitioner does not lead us to conclude that the beneficiary received any remuneration during the requisite period or that she has been, or will be, employed continuously (i.e., full-time).

In addition, we do not find the record adequately documents that during the requisite period the beneficiary has been continuously performing essentially the same duties that the petitioner intends for the beneficiary to perform. In his initial letter, [redacted] indicated that the petitioner was petitioning for the beneficiary to "continue to serve as Secretary of the Sister Disciple Home." In the letter submitted by [redacted] in response to the director's request for evidence, the [redacted] refers to the beneficiary's position as

"Intercessory Leader" and explains that the beneficiary "initially worked in the choir as a member, then proceeded to work . . . as the secretary . . .[and that s]he is currently both in the choir and overseeing the intercessory unit of the church." Given that [redacted] clearly distinguishes between the beneficiay's previous position as secretary and her current position as intercessory leader "overseeing the intercessory unit of the church," the record does not establish that throughout the two-year qualifying period, the beneficiary had been continuously performing essentially the same duties that the petitioner intends for the beneficiary to perform in the United States.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work as a parish minister has not been carrying on "such work" if employed as a hospital chaplain or translator for much of the preceding two years. Based on the information contained within the record, the petitioner has submitted insufficient evidence to establish that throughout the two-year qualifying period, the beneficiary had been continuously performing (i.e., full-time and compensated employment) essentially the same duties that the petitioner intends for the beneficiary to perform in the United States.

The next issue relates to the question of whether the petitioner seeks to employ the beneficiary in a qualifying vocation or occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

> *Religious occupation* means 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.
>
> *Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

With regard to religious occupations, the lists in the above regulation reflect 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.

In revoking the petition, the director noted that although the regulations "require no specific religious training or theological education," the beneficiary "must still be qualified in [his or her] occupation." Despite this statement, the director revoked the petition, based in part on the determination that the record contains "no evidence, nor . . . any assertion" that the beneficiary's position requires "formal religious training or theological education." Additionally, the director determined that the petitioner failed to establish that the

beneficiary has the qualifications for the position, that the position requires a full-time employee or that her duties are religious in nature. Although the director's finding regarding the beneficiary's qualifications is permissible, the finding regarding the petitioner's training and education cannot stand as the regulation requires no specific religious training or theological education.

Originally, the only requirement for qualification cited by the petitioner is "a belief in Jesus Christ as Lord and Savior, a total adherence to the doctrine of the Holy Bible, and submission to church regulations." On appeal, the petitioner provides a more comprehensive list of required qualifications. While there is no reason to doubt the list of required qualifications, or the fact that the beneficiary meets these qualifications, the issue of whether the beneficiary's position is a qualifying occupation or vocation is a separate determination than the issue of whether the beneficiary qualifies for such a position.

On appeal, [redacted] argues that the beneficiary's "answering the call of Christ is a vow of commitment," such that the beneficiary's position is considered a religious vocation. The petitioner then asserts that it is against the petitioner's religious beliefs to have "an outward ceremony of vows." Such evidence is not persuasive evidence that the beneficiary's position as an "intercessory leader" involves a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, like the vows taken by nuns and priests.

Accordingly, if the beneficiary's position were to fall into any of the two above described classifications, it would be that of a religious occupation. However, the duties, as described, do not appear to involve traditional religious functions or religious activities. Instead, the duties as described appear to involve logistical and administrative support performed as a "secretary" for the "administrative body" of the petitioning entity.

On appeal, [redacted] contends that "maybe the confusion [over the beneficiary's duties] lies in the use of the term 'administrator'," and that "[w]ithin the church, the term overseer or leader serves better." This argument is not persuasive. Any "confusion" related to the beneficiary's position is predicated on the inconsistent description of the beneficiary's proffered position. Regardless of the title that is applied to the proffered position, it is the duties of the position that will serve as the determining factor as to whether the position is a qualifying occupation.

The beneficiary's duties prior to the appeal were described as "coordinat[ing] the meetings, the programs, the materials, and delegat[ing] prayer tasks." Given this description, we do not disagree with the director's conclusion that the beneficiary's duties are essentially administrative in nature, rather than religious.

On appeal, Bishop Towns offers a new description of the beneficiary's responsibilities but provides no explanation for these material changes. The newly described duties include:

1. Guidance of the spiritual life of house members. This includes making sure that all the prayer sessions activities, and ministry services provided are consistent with church theology,

2. Coordination of prayer vigils, accumulation of prayer requests and follow up.

3. Assisting in budget documentation and follow up.

4. Participation in all ministry events.

5. Presentation to Board of Elders.

6. Peer Counseling.

7. All other duties as assigned by the Bishop.

The list of duties provided on appeal offers new duties of uncertain religious significance, such as "assisting in budget documentation" and "presentation to Board of Elders." Further, the new list also includes the beneficiary's "participation in all ministry events" but does not distinguish how the beneficiary's "participation" during these events is any different that any other member of the congregation. Upon consideration, while some elements of the beneficiary's work may involve religious purposes, the evidence does not persuasively demonstrate that the beneficiary's duties are preponderantly related to traditional religious functions.

In addition to finding that the duties of the beneficiary's position are not directly related to the religious creed of the petitioner's denomination, we also do not find that the beneficiary's position is defined and recognized by the governing body of the denomination, or that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

As noted above, there is no documentary evidence to corroborate the petitioner's assertion that the beneficiary was compensated in the form of room and board. Moreover, there is no evidence the beneficiary was paid for her work until 2001 when she received a nominal amount of $1200.00, or that her work involved full-time employment. In a letter dated, October 26, 2002, the petitioner indicated that the beneficiary "[c]urrently . . . is remunerated $1,200 . . . monthly based on full time service." There is no explanation for the discrepancy between the petitioner's original claim that the beneficiary was compensated with room and board and the subsequent indication that the position was compensated with a monthly salary. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Accordingly, the petitioner has failed to establish that the beneficiary's 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.

The remaining issues relate to the beneficiary's reliance on supplemental employment and the petitioner's ability to pay the beneficiary's wage.

The regulation at 8 C.F.R. § 204.5(m)(4) states:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly establish that the

> alien will not be solely dependent on supplemental employment or solicitation of funds for support.

The petitioner's initial submission did not contain any description of the proposed terms of the beneficiary's compensation, as required by 8 C.F.R. § 204.5(m)(4). The director, therefore, requested evidence to meet those requirements. In response, Bishop Towns indicated that the beneficiary "has received subsidized housing . . . and has open access to all ministry services." We note that although the above regulation requires only that the beneficiary will not be *solely* dependent on supplemental employment or solicitation of funds for support, the petitioner's assertion that the beneficiary would receive a salary, room, and board, in this instance, does not suffice as evidence that the beneficiary will not be solely dependent on income from other sources. In light of the evidence indicating that the beneficiary engaged in what appears to be full-time, outside employment with Aera Energy Services Company less than one year after the filing of the petition, the petitioner's statement, on its own, is insufficient to establish that a *bona fide* job offer exists.

Further, in a letter dated October 26, 2002, submitted by [redacted] in support of the beneficiary's adjustment of status application, [redacted] indicates that the beneficiary "currently" receives $1,200 per month. He does not mention the beneficiary's subsidized housing. In yet another letter dated November 20, 2002, [redacted] indicates that the beneficiary's subsidized housing has a monetary value of $13,630.00. This letter makes no mention of the beneficiary's $1200 monthly salary. Given the discrepancies noted, we do not find sufficient evidence to establish that a bona fide job offer existed in June 2000 when the petition was filed.

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.*

In instances where the petitioner has established that it has actually paid the beneficiary, such evidence is prima facie evidence of the petitioner's ability to pay the proffered wage. In this case, we have found insufficient evidence to establish that the petitioner has compensated the petitioner financially or through provisions for room and board.

Although the petitioner submitted bank statements, an "expense financial summary," "profit and loss statements," "payroll registers," quarterly wage and withholding reports, paystubs, and the beneficiary's 2001 W-2 Wage and Tax Statement, the above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, *audited* financial statements, or annual reports. Although the petitioner is free to submit other kinds of documentation, such submission is considered *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. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Moreover, the majority of the petitioner's evidence relates to the petitioner's finances in 2001 and 2002. Accordingly, such evidence is

insufficient to demonstrate that the petitioner had the ability to pay the beneficiary from the time of filing in June 2000 in accordance with 8 C.F.R. § 205.4(g)(2).

On appeal, [redacted] refers to the petitioner's previously submitted pay stubs, W-2 Form, financial statement as being sufficient evidence to establish the petitioner's ability to pay. As noted previously, however, such documentation does not meet the requirements of the regulation.

[redacted] also submits a copy of the petitioner's 2002 and 2003 W-2 forms. Given that the W-2 forms were issued more than two years after the filing of the petition, they are not sufficient to establish the petitioner's ability to pay at the time of filing.

Finally, [redacted] submits financial statements from Don O'Dell, CPA, dated 2000, 2001, and 2002. The statements, however, are not accompanied by a cover letter or other evidence to establish that Mr [redacted] has audited or reviewed the financial statements or in any way attests to their accuracy.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.