identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

U.S. Citizenship and Immigration Services

PUBLIC COPY

C1

[redacted]

FILE: LIN 03 267 51075 Office: NEBRASKA SERVICE CENTER Date: JUN 24 2005

IN RE: Petitioner:
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:

[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 Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an "interdenominational student missionary organization." 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 director. The director determined that the petitioner had 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, that the beneficiary was qualified for the position within the organization, or that the petitioner had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits 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 first issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

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 September 15, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

According to the petitioner's letter of July 7, 2003, the beneficiary is one of the founding members of Disciples for Christ (DFC)-Korea, came to the United States in March 1999 and was appointed by the DFC board of directors to serve as director of DFC-Washington in October 2000. The petitioner stated:

> [The beneficiary's] major duty [as director] is to make thousands of Korean students in Washington as the disciples of God and help them to be able for local Korean churches and US, and all nations and races. He spends more than 40 hours on campus Monday through Friday . . . propagating, disciples follow-up (personal/group), leading prayer meeting, faith counseling, leader training, educating, leading seminars, . . . giving sermons. Also for the efficiency, he cooperates with many local Korean churches by helping them on weekends.

The petitioner submitted a detailed and chronological list of activities of the DFC since March 1999, and a list of major activities and a weekly work schedule for the beneficiary. The petitioner also submitted a letter from the University of Washington, which states, "The University of Washington Chapter of the Disciples for Christ is a UW registered organization in 'good standing'" The evidence includes a copy of a University of Washington document indicating that the DFC had confirmation for reserved spaces in the university's "HUB" building for the purpose of holding weekly chapel. Other supporting documentation submitted by the petitioner includes flyers. However, these documents are not accompanied by translations that comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, and did not certify that he or she is competent to translate from Korean into English. Thus these documents are of little evidentiary value.

The beneficiary entered the United States in March 1999 pursuant to an F-1 nonimmigrant student visa. The petitioner submitted a copy of a transcript from the Faith Evangelical Lutheran Seminary indicating that the beneficiary completed a Master of Arts in Christian Ministry (Christian Counseling) program at the seminary from September 1, 2000 to June 29, 2002. The petitioner submitted what purports to be a March 5, 2001 letter certifying that the beneficiary had worked as a full-time staff member with the DFC from April 1992; however, the translated document is not accompanied by the original and the translation does not comply with the requirements of 8 C.F.R. § 103.2(b)(3). Therefore, it has no probative value.

The petitioner submitted no evidence to corroborate the beneficiary's claimed employment with DFC prior to entering the United States to attend school. 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)). The petitioner also failed to submit competent documentary evidence to establish the beneficiary's work with DFC-Washington. *Id.*

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, 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.

The AAO has held that continuity of work experience is not interrupted when a practicing ordained minister engages in education in furtherance of his or her vocation. However, the petitioner submitted no competent evidence to establish that the beneficiary was engaged as a practicing minister prior to entering the United States to attend school or of the beneficiary's work prior to beginning school in September 2000.

On appeal, in a letter dated September 15, 2004, the petitioner states:

> [The beneficiary] had been studying for his Master of Arts in Christian Ministry (Christian Counseling major) in Lutheran Evangelical Faith Seminary (from September of 2000 to

> June of 2002) before his I-360 application, and then he excelled in pursue [sic] of his Doctor of Ministry in Expository Preaching . . . He took 8 hours credits each quarter (for 8 hours in the evening, every Mon. & Tue.) and spent more than 60 hours per week for the revival of DFC ministry on the campuses.

The petitioner further states that the beneficiary worked full time but was paid by DFC-Korea because of his visa status. The petitioner submitted no evidence of the financial support received by the beneficiary. In a letter dated July 25, 2003, the director of DFC in Korea "certified" that the beneficiary had worked as a full time staff member performing various religious duties such as giving sermons, counseling and Bible study. Additional letters from the director and a part-time staffer also indicate that the beneficiary received funding from the DFC-Korea. On appeal, the petitioner submitted statements signed by members of DFC-Washington "approving" the beneficiary's work "on a full-time campus ministry since March of 1999." The petitioner, however, failed to submit evidence of payments, such as canceled checks or pay vouchers, or other documentary evidence such as verified work schedules, to corroborate any employment by the beneficiary during the qualifying two-year period. *Matter of Soffici*, 22 I&N Dec. at 165.

The evidence is insufficient to establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The second issue on appeal is whether the petitioner has established that the beneficiary is qualified for the position within the organization.

The director determined that, although the beneficiary was an ordained minister with the Korean Baptist Church, the petitioner had not established that the beneficiary was authorized to conduct worship for the petitioner.

The petitioner is an interdenominational religious organization. In an undated letter, Reverend Dean Johnson, senior pastor with the Immanuel Celebration Church in Tacoma, Washington, and a member of the petitioner's board of directors, stated that traditional Christian churches commonly refer to organizations such as the petitioner as "para-church ministries," and that such ministries work in cooperation with Christian churches. The petitioner's chairperson, in a letter dated June 1, 2004 stated:

> Since this organization is chartered as [sic] basis of inter-denominational, there is no restriction and the rule of accepting staffs in according [sic] to the certain denominational back ground . . . I also understand that each denominational presbytery, synod, and general assembly authorize qualified and license[d] pastors to work as para-church missionary/out reach movement preferably into same denomination, however, they are allowing them to co-work as partner or sole responsible position into mission organizations.

On appeal, the petitioner submits a September 2, 2004 letter from the president of the Korea Baptist Convention, who states that the beneficiary is authorized under the provisions of its church regulations to work as a Baptist minister with the petitioning organization.

The record contains a copy of a certificate of graduation reflecting the beneficiary received a master of divinity degree from the Korea Baptist Theological University in 1995, and a copy of a November 11, 1996 certificate of ordination as a pastor from the Korea Baptist Convention.

The evidence sufficiently establishes that the beneficiary is qualified for the position within the petitioning organization.

The third issue is whether the petitioner has established that it had 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 stated that it would pay the beneficiary $28,800 per year. As evidence of its ability to pay this wage, the petitioner submitted with the petition a copy of its monthly checking account statement for May and June 2003, copies of notices of funds transfers in May, June and July 2003, and copies of its financial statements for the periods February 2000 to December 2001 and January 2002 to June 2003.

The petitioner also stated in a July 7, 2003 letter that DFC-Korea contributed monthly support for the DFC-Washington ministry. [redacted] a part-time staffer for DFC-Korea stated in an undated letter that the organization had been sending monthly support to the petitioner for the beneficiary's ministry. Nonetheless, the regulation requires the petitioner to establish that the prospective U.S. employer has the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner states that it is now financially able to support the beneficiary. As evidence, it submits a copy of its financial statement for the period January 2002 to July 2004, and copies of its monthly checking account statements for July 2003 and June 2004.

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 primary evidence for the prospective U.S. employer.

Additionally, as discussed further below, the record is unclear as to the exact nature of the relationship between the petitioner and the beneficiary's prospective employer, DFC-Washington. The financial documentation submitted by the petitioner refers to both organizations or simply to DFC.

The record does not establish that the beneficiary's prospective U.S. employer, DFC-Washington, had the continuing ability to pay the beneficiary the proffered wage as of the date the petition was file.

Beyond the decision of the director, the petitioner has not established that the prospective U.S. employer is a bona fide nonprofit tax-exempt religious organization.

The petitioner submitted a copy of a certificate of incorporation issued to it by the Secretary State for the State of Washington. The petitioner did not submit a copy of its articles of incorporation. The petitioner also submits a state of Washington tax registration that shows a unified business identification number for the petitioner and DFC-Washington with the organizations listed at the same address. Letterhead used by the petitioner reflects the name of both the petitioner and DFC-Washington.

In its letter of July 7, 2003, the petitioner stated:

> In September 1995, our DFC-International was incorporated in the State of Washington as a non-profit organization and has a subordinate organization, DFC-Washington. DFC-International is planning to organize subordinate organization cover[ing] the major states of America by a group exemption, DFC-International in the future . . .On October 5th 2000, the DFC board of directors appointed [the beneficiary] as the director of DFC-Washington.

The petitioner submitted a copy of an April 9, 2003 letter from the Internal Revenue Service (IRS) informing the petitioner, DFC International, that the IRS was modifying its tax-exemption to that of an organization under sections 509(a)(1) and 170(b)(1)(A)(i) of the Internal Revenue Code (IRC). The petitioner's previous exemption was as an organization described in section 170(b)(1)(A)(vi) of the IRC. The letter does not indicate that the exemption under section 501(c)(3) of the IRC applied to any subordinate unit of the petitioner.

As the beneficiary will be employed by a subordinate organization of the petitioner, the petitioner must either provide verification of that subordinate's individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. The requirements of establishing tax-exemption as a religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B) are further detailed in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003), and are as follows:

(1) A properly completed IRS Form 1023,
(2) A properly completed Schedule A supplement, if applicable,
(3) A copy of the organizing instrument of the organization that contains he appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
(4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B). The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by

submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

The evidence does not establish that the beneficiary's prospective U.S. employer is a bona fide tax-exempt nonprofit religious organization. This deficiency constitutes an additional ground for denial of the petition and 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.