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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 11 2005
SRC 02 128 50538

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The self-petitioner seeks classification 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 supervisor of Christian Hospitality, a mission established to distribute free clothing, bibles, and other religious information. The director determined that the self-petitioner had not established: (1) that he had the requisite two years of continuous work experience as a supervisor immediately preceding the filing date of the petition, (2) that the position qualifies as a religious occupation, (3) that the organization is a qualifying tax-exempt organization, and (4) that the self-petitioner entered the United States for the purpose of carrying in a religious vocation or occupation.

On appeal, the self-petitioner requests an extension of 24 months in order to submit a brief and/or evidence to the AAO. There are no provisions in the regulations for such an extension. Regardless, to date, over a year after the filing of the appeal, the record contains no further substantive submission from the petitioner. We, therefore, consider the record to be complete as it now stands.

The first issue to be discussed concerns the director's finding regarding 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 without inspection, the director concluded 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 is whether the self-petitioner had the requisite two years of continuous work experience immediately preceding the filing date of the petition. 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)(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 March 11, 2002. Therefore, the petitioner must establish that he was continuously performing the duties of a supervisor throughout the two years immediately prior to that date, from March 11, 2000 through March 11, 2002.

The Form I-94, Arrival and Departure Record, indicates that the beneficiary initially entered the United States on August 26, 2001 as a B-1 nonimmigrant with authorization to remain in the United States until February 25, 2002. As the beneficiary was outside of the United States for more than half of the two-year period, his experience in the United States cannot suffice to meet the experience and denominational membership requirements. It is further noted that the record contains no evidence that the self-petitioner received authorization to remain in the United States beyond February 25, 2002. Therefore, any work performed by the self-petitioner in the United States during the qualifying period was performed without authorization.

With the initial filing, the self-petitioner failed to submit any evidence of his required two years of membership in the denomination and evidence of his two years of required experience as a supervisor. Further, the self-petitioner failed to submit evidence of how he would be paid or remunerated in his position as supervisor of Christian Hospitality and that he will not be solely dependent on supplemental employment or solicitation of funds for support.

Accordingly, on March 24, 2003, the director requested further evidence of the self-petitioner's eligibility as a special immigrant religious worker. Specifically, the director requested, "a detailed description of the [self-petitioner's] prior work experience including duties, hours and compensations . . . accompanied by appropriate evidence (such as copy of pay stubs or checks, W-2s or other evidence as appropriate)." The director noted that all of the information requested must include the two years preceding the filing of this petition.

In response to the director's request, the self-petitioner submits a letter which states, "I have been working in this position in UK since the beginning of 1996. Hours at least 60 per week . . . Payment is received in the form of remuneration of all living expenses and other incidental expenses incurred." The self-petitioner does not provide any documentary evidence to support his claims of employment since 1996 or remuneration. Instead, the self-petitioner states:

> Normally the Income Tax Returns in UK for the period April 2000 to April 2001 would be mailed Autumn 2001, returnable up to January 2002, and payable in 2002. Though we were in contact with the Tax Office up to the end of 2001, we received no tax returns forms or tax demands [if any tax had been due – they do not operate the identical not-for-

> profit scheme as in USA], possibly because it was known we had been out of the country for several months. Accordingly, we have supplied relevant data such as would have been supplied in a condensed form on the tax return, plus any other relevant information for the period.

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 her denial, the director noted that the record contained no evidence that the self-petitioner had been "employed professionally in the same capacity as the proffered position for at least two years prior to filing the instant I-360 petition."

Based upon the above discussion, we agree with the determination of the director that there is not sufficient evidence that during the requisite two year period, the self-petitioner was continuously employed, on a full-time basis, in the same capacity as the proffered position.

The next issue is whether the beneficiary's position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definition:

> 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, fundraisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position it is offering qualifies as a religious occupation as defined in the regulation. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services (CIS), 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.

The self-petitioner indicates the following duties for the position of supervisor of Christian Hospitality:

1) Organizing and running the day-to-day affairs of the mission, including all relevant legal and local authority requirements.

2) Arranging the acquisition and distribution of free Bibles to requesting individuals and material goods or aid to people in need.

3) Printing flyers and other Christian literature as required, plus web resources and publication.

4) Supplying funds for the mission by manufacturing equipment for sale in the mission shop.

The regulation specifies that religious occupations involve activities that relate to traditional religious functions. The nature of the activity performed must embody the tenets of the particular religion and have religious significance. Their service must be directly related to the creed of the denomination.

Upon consideration of the available evidence, we are not persuaded that the self-petitioner's proposed position qualifies as a traditional religious occupation rather than an administrative or secular position. The petitioner's stated duties involve organizing and running the affairs of the mission, arranging the acquisition and distribution of Bibles, printing flyers and other Christian literature, and supplying funds for the mission by manufacturing equipment for sale in the mission shop. Though the self-petitioner's work will be performed for a Christian foundation, none of his duties have any inherent religious function. Further, as the record contains no evidence that the self-petitioner was remunerated for his full-time work, the self-petitioner cannot establish that his position is traditionally a permanent, full-time, salaried occupation.

The next issue is whether the self-petitioner's foundation has the required tax-exempt status. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the foundation qualifies as a non-profit foundation in the form of either:

> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 [IRC] 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 [IRS] to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The record contains a copy of letter from the IRS which reflects that Christian Hospitality "is exempt from Federal income tax under section 501(a) of the [IRC] as an organization described in section 501(c)(3)." The letter further indicates that Christian Hospitality is "a private foundation within the meaning of section 509(a) of the Code."

In her decision, the director erroneously noted that the self-petitioner's tax-exempt status was based upon section 170(b)(1)(A)(ii) of the IRC. Accordingly, the director failed to give proper consideration to the petitioner's classification within the meaning of section 509(a) of the code. Despite, this error in the director's analysis, we agree with the final determination of the director that the self-petitioner has failed to demonstrate that the foundation received its tax exemption in accordance with section 501(c)(3) based upon its religious nature.

The burden of proof is on the self-petitioner to establish that the foundation's classification under section 501(c)(3) of the Code is based upon it being organized and operated exclusively for religious purposes, rather than charitable, scientific, literary, or educational purposes, for instance. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

(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 the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
(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), cited above. 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. 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 record does not contain sufficient evidence to determine that the self-petitioner's foundation received its tax exemption based upon its religious character.

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.