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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
SRC 01 120 52077

Office: TEXAS SERVICE CENTER Date: MAR 11 2005

IN RE: Petitioner: [Redacted]
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:

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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 minister. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director further 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 position qualified as that of a religious worker, that it had extended a qualifying job offer to the beneficiary or that it had the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner 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 regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 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 to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

With the petition, the petitioner submitted a copy of an October 25, 1996 letter from the IRS granting the [REDACTED] in Pompano Beach, Florida, tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) as an organization described in sections 509(a)(1) and 170(b)(1)(A) of the IRC. The letter does not indicate that this exemption is applicable to any subordinate units of the [REDACTED]

In a request for evidence (RFE) dated June 18, 2003, the director instructed the petitioner to submit evidence of its tax-exempt status under section 501(c)(3) of the IRC or evidence that it was included under a group tax-exemption granted to its parent organization. In response, the petitioner resubmitted a copy of the October 25, 1996 IRS letter, and submitted copies of the articles of incorporation, and SS-4, Application for Employer Identification Number, for the church in Pompano Beach.

The petitioner stated that it is affiliated with the General Council of the Brazilian Assemblies of God in the United States, "which also officially represents" the General Council of Assemblies of God in Brazil. The petitioner also submitted an organizational diagram, which reflects that it is the national headquarters for the [REDACTED] and that it has churches with local pastors throughout Florida, including Pompano Beach, Naples and Orlando, and one each in Maryland and Texas.

In its response to the RFE, the petitioner's pastor stated that the beneficiary will serve as assistant pastor of the Church Assembly of God Bethlehem Ministry in Naples, Florida, and according to the church organizational diagram, the beneficiary serves as pastor in the church in Naples, Florida. However, in a separate letter dated February 22, 2001, both the petitioner and the president of [REDACTED] the petitioner's parent organization in Brazil, indicated that the beneficiary would serve as an assistant pastor in the church in Orlando. In a letter dated February 23, 2001, the petitioner's senior pastor also indicated that the beneficiary has duties at the mother church in Lighthouse Point, Florida as well as at the church in Orlando. The petitioner does not provide clear evidence as to the identity of the beneficiary's prospective U.S. employer. 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).

The petitioner must establish that the prospective U.S. employer is a bona fide nonprofit tax-exempt religious organization. To do this, it must either provide verification of the employer'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. Such documentation to establish eligibility for exemption under section 501(c)(3) of the IRC includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The record reflects that the petitioner uses the tax identification number assigned by the IRS to the Pompano Beach church. However, there is no evidence in the record to indicate that it is legally authorized to do so. The petitioner submitted no evidence to establish the fiscal relationship between it and the churches listed in its organizational diagram. We note that the petitioner's third quarter 2003 tax statement, which lists paid employees of the church, does not include all of the pastors of the local churches, not even those in a legal immigration status. The evidence indicates that each local church is financially independent of each other and the petitioner.

In its original submission, the petitioner indicated that the beneficiary's prospective U.S. employer is the church in Orlando, Florida. In response to the RFE, the petitioner stated that the beneficiary would pastor the Naples church. Regardless, the petitioner failed to submit evidence that either the Orlando or Naples church is tax-exempt as a religious organization under section 501(c)(3) of the IRC.

The evidence does not establish that the beneficiary's potential U.S. employer is a bona fide tax-exempt nonprofit religious organization, as required by the statute and the regulation.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part:

An 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 March 6, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

The petitioner stated in its letter of August 15, 2003, that the beneficiary had worked as an assistant pastor in Brazil from September 1997 to September 2000, and that his duties included baptizing members, preaching and celebrating weddings and evangelization. In his February 22, 2001 letter, the president of the petitioner's parent organization stated that the beneficiary had been a member of the denomination "for more than 20 years, and many years he has work[ed] in several areas in its performance [sic] religious, notably as Assistant Pastor, having acted as licensed minister in several churches." The petitioner submitted no evidence to corroborate the beneficiary's employment in Brazil or the nature of his duties there. 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).

The petitioner stated that the beneficiary has worked voluntarily with the ministry since he entered the United States on a tourist visa, which according to the I-360, Petition for Amerasian, Widow or Special Immigrant, was on September 23, 2000. The petitioner further stated, however, that the Brazilian Church "sends him money to pay his salary." The letter from the president of [REDACTED] Reverend [REDACTED] stated that the Brazilian organization "is the provider of the financial support for the referred Pastor for living expenses and sustenance . . . as long as he is residing in this country and will monthly send to him the amount of US\$ 1,500.00." The evidence does not establish when the beneficiary stopped working in a "voluntary" capacity and became a paid employee of the church in Brazil. The petitioner submitted no evidence to resolve this inconsistency. See *Matter of Ho*, 19 I&N Dec. at 591-92.

The petitioner also submitted copies of the beneficiary's bank statements in which it highlighted deposits annotated as "counter credit." According to the petitioner, this is evidence of the support the beneficiary received from the church in Brazil, however the evidence submitted does not reflect the source of the money credited to the beneficiary's accounts. The petitioner submitted no other corroborative evidence of the beneficiary's employment in the United States prior to the filing date of this petition.

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.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

The petitioner submitted no evidence such as pay vouchers, canceled checks or other documentary evidence to corroborate the beneficiary's employment during the qualifying two-year period. Further, the record is unclear as to when the beneficiary became an ordained minister. We note that he received a Bachelor in the Arts of Theology from the International Sendnary Hosanna and Bible School, Corp., Sao Paulo, in April 2000. The evidence does not reflect the details of the beneficiary's attendance at this school; however, attendance at school generally indicates that the individual was not working continuously in the religious occupation. *Matter of Varughese*, 17 I&N Dec. 399.

The evidence is insufficient to establish that the beneficiary was continuously employed as a minister for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that the position qualified as that of a religious worker.

Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation. To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. 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 states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably

be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

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 proffered position is that of a minister. According to the petitioner, the beneficiary's duties at the Orlando church would include conducting worship services, prayer sessions, Bible study, and Holy Communion services. The duties of the position at Naples would include Bible school, "visits and meeting of praise," prayer, "liberation service," "consecration" and choir rehearsal. The petitioner submitted evidence that it has several churches in various parts of Florida and the United States, each with a local minister in charge and several with positions for an assistant pastor.

Although it is unclear from the record, as discussed further below, that the petitioner has extended a qualifying job offer to the beneficiary, the evidence is sufficient to establish that the position of minister is a traditional religious vocation within the petitioner's denomination.

The director determined that the petitioner had not established that the position was a full-time position within the organization as the petitioner failed to specify whether the beneficiary was to work mornings or afternoons.

In its letter accompanying the petition, the petitioner's pastor outlined the beneficiary's duties, which included conducting worship services at the Orlando church, conducting prayer sessions, visitations, cell group worship and prayer services, and establishing new cell groups. The petitioner also outlined weekly and monthly duties that the beneficiary was to perform at the Lighthouse Point location. Although the petitioner did not list specific hours for the performance of the duties in Orlando, it did specify the time the beneficiary was expected to devote to the duties at Lighthouse Point. The petitioner also listed the duties and hours the beneficiary was expected to perform at the Naples location.

While we find the evidence is sufficient to establish that the position at either the Orlando or Naples location is a full-time position, the evidence is conflicting as to what position is being offered to the beneficiary. As noted previously, the duties of the minister position at Orlando and the duties at the Naples location are not the same. Therefore, the petitioner has not shown that it has extended a qualifying job offer to the beneficiary.

The director also determined that the petitioner had not established 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.

In his letter of February 22, 2001, Reverend da Costa, the president of the petitioner's parent organization in Brazil, stated, "We clarify that the *Evangelical Church Assembly of God* in São Paulo – SP, Brazil is the provider of the financial support for the referred Pastor for living expenses sustenance of him as long as he is residing in this country and will monthly send to them the amount of US\$ 1,500." In response to the director's RFE, the petitioner stated that the beneficiary would be compensated at a rate of \$2,000 per month.

The petitioner submitted copies of its checking account statements for the months of November and December 2000 and January 2001, and copies its balance sheets December 2000 and January and February 2001. In response to the RFE, the petitioner submitted copies of its year 2000 and 2001 Form 990, Return of Organization Exempt from Income Tax, and copies of its balance sheets from 2001 through 2003, and copies of monthly checking account statements for May through July 2003.

The regulation states that the petitioner must establish that the prospective U.S. employer has the ability to pay the beneficiary the proffered wage. The petitioner submitted no evidence of the financial status of the Orlando church or the Naples church.

The petitioner has not established that the beneficiary's prospective U.S. employer has the ability to pay the proffered wage.

According to the Form I-360, the beneficiary last entered the United States in September 2000 pursuant to a B-2 temporary visitor for pleasure visa. The director stated that it could not be determined that the beneficiary's sole purpose in entering the United States was to work for the petitioner. The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa. We withdraw this statement by the director.

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.