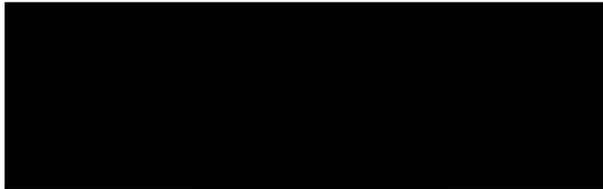


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**U.S. Citizenship  
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Services**

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAY 01 2006**  
SRC 05 095 50050

IN RE: Petitioner: [REDACTED]  
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 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 pastor. The director denied the petition on August 18, 2005, finding that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition, that the position offered is a qualifying religious occupation, that the petitioner has tendered a qualifying job offer, and that the petitioner has established its ability to pay the beneficiary the proffered wage.

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 February 16, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date, from February 16, 2003 through February 16, 2005.

As it relates to the petitioner's employment during the two-year period prior to the filing of the petition, the record contains a letter dated January 26, 2005, from [REDACTED], moderator of the petitioning church, who states:

[The petitioner] is known to me and to this association as the pastor of Iglesia Bautista Betel, a congregation that has been in existence since October, 2003, and which has been a full member of the Laredo Baptist Association since October 2004.

In his request for evidence, dated July 5, 2005, the director noted that this letter was not sufficient to establish the beneficiary had the requisite work experience in the two-year period preceding the filing of the petition and requested the petitioner to submit:

[A] detailed description of the beneficiary's prior work experience including duties, hours and compensations, (especially compensations) accompanied by appropriate evidence (such as copies of pay stubs or checks, W-2s or other evidence as appropriate). Submit an IRS certified copy of the income tax returns with all the pertaining W-2s for the two years preceding the filing of this petition.

In response to the director's request, the petitioner submitted a letter, dated July 28, 2005, from [REDACTED], clerk of the petitioning church, who states:

This letter is to confirm and certify that [REDACTED] is the pastor of Iglesia [REDACTED] and he has served in this capacity since the inception of the congregation in 2003. Iglesia Bautista Betel is a member of the Laredo Baptist Association and is a mission congregation of Iglesia Bautista Nuevo Nacimiento, Laredo.

The petitioner failed to submit any documentary evidence such as the beneficiary's W-2, Wage and Tax Statements or tax returns or paystubs. Moreover, the petitioner failed to describe the duties performed by the beneficiary during the two-year period preceding the filing of the petition and the hours required by those duties. Accordingly, the director denied the petition, in part, because of the petitioner's failure to establish that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On appeal, the petitioner submits a check dated October 2005 from the petitioner to the beneficiary for a "Piper Grant," as well as a printout listing checks and "Piper Grants" given to the beneficiary from January 2005 through December 2005. [REDACTED] indicates that a Piper Grant is money "given to a pastor to help with his expenses through the year." The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In this instance, the director gave the petitioner the opportunity to submit this evidence prior to the decision. We emphasize that the director did not request some vague class of documentation, but rather specific documents, leaving no ambiguity as to what documents were required. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence.

Regardless, the evidence on appeal does not overcome the director's findings regarding the beneficiary's requisite experience. First, the evidence submitted does not establish that the beneficiary received any compensation from the petitioner prior to 2005. Second, the petitioner offers no further details regarding the

number of hours worked by the beneficiary, or the actual duties performed by the beneficiary to establish that the beneficiary worked on a full-time basis for the petitioner. 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)). It is further noted that in [REDACTED]'s original letter, he indicates that the petitioner has been the pastor of Iglesia Bautista Betel, "a congregation that has been in existence since October, 2003." The record contains no evidence to establish the beneficiary's experience prior to October 2003, dating back to February 16, 2003, the start of the requisite two-year period. Accordingly, we affirm the director's finding on this ground.

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying position. The regulation at 8 C.F.R. § 204.5(m)(2) defines a "minister" as an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

In this instance, the director analyzed the evidence to determine whether the proffered position qualifies as a religious occupation despite the fact that the petitioner submits evidence that the beneficiary is a licensed minister. While the record is, in many aspects, deficient, it is not clear what led the director to analyze the evidence in this way. Regardless, we find the record is not sufficient to establish that the position offered is that of a qualifying minister. As correctly noted by the director, the petitioner has failed to describe the proffered position, its requirements, and the duties required of such a petition. Accordingly, it is unclear whether the duties required of the beneficiary in the proffered position are duties that can only be performed by a licensed minister or whether they are generally functions that could be delegated to a lay preacher.

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

Further, 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.

In this case, the petitioner has not provided any evidence to establish the terms of payment and has not provided copies of annual reports, federal tax returns, or audited financial statements as evidence of its ability to pay the beneficiary.

Beyond the director's decision, the letter submitted by [REDACTED] letter on appeal further precludes a finding that the beneficiary will not be solely dependent on supplemental employment in accordance with the regulation at 8 C.F.R. § 204.5(m)(4) cited above. In his letter, [REDACTED] states, "I know that [the petitioner] has also labored in secular work to sustain his family."<sup>1</sup> Since the alien is currently employed by the petitioner, yet must resort to secular employment in order to support his family, it appears that the alien would have to continue to engage in secular employment in order to support his family if this petition is approved. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.

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<sup>1</sup> Because the term "continuously" that is contained in the regulation at 8 C.F.R. § 204.5(m)(1) has been interpreted to mean that one did not take up any other occupation or vocation, the fact that the beneficiary appears to have engaged in outside employment is also further evidence that he lacks the requisite two years experience. *See Matter of B*, 3 I&N Dec. 162 (CO 1948).