U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

JUN 2 1 2007

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 05 207 52099

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:

[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.

Laura Dedrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is an Episcopal 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 pastoral associate. The director determined that the petitioner had not established: (1) that the position offered to the beneficiary constitutes a religious occupation; (2) that the beneficiary had the requisite two years of continuous work experience as a pastoral associate immediately preceding the filing date of the petition; or (3) the petitioner's ability to compensate the beneficiary.

On appeal, the petitioner submits copies of various documents, some of them previously submitted, and a new brief from counsel. Before we turn to the details of the petition and the director's findings, we address here one of counsel's general arguments. Counsel observes that the petitioner had previously obtained R-1 nonimmigrant religious worker status, and extensions of that status, for the beneficiary. Counsel claims that "the approvals of extension requests herein largely operate as a form of *res judicata* with regard to the legal issues which are being raised by DHS for the first time – despite a lengthy opportunity to raise them before."

Counsel's reliance on the beneficiary's nonimmigrant status is not persuasive. 8 C.F.R. § 214.2(l)(9) provides for the revocation of nonimmigrant visas, which shows that the approval of a nonimmigrant visa is not an unalterable, unreviewable decision subject to *res judicata*. Decisions subject to *res judicata* may not be revisited or reopened at all. Moreover, the petitioner in this case has been afforded due process throughout this proceeding, including the issuance of a request for evidence (with which the petitioner did not fully comply) and affording the petitioner the opportunity to appeal the director's adverse decision to this office.

Having established that the principle of *res judicata* does not compel the director to approve a special immigrant religious worker petition on behalf of an alien who holds R-1 nonimmigrant status, we turn to the specific grounds for denial.

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 is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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.

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 a letter accompanying the petitioner's initial submission, Rector of the petitioning church, described the beneficiary's duties:

> [The beneficiary's] responsibilities include teaching Catechism, coordinating religious activities for families, the religious formation of children, moderating bible study groups, and as a part of Church ministry, facilitating workshops on Central American Culture and teaching Spanish for adults in the Community.
>
> During our 8:30 a.m. Mass, [the beneficiary], as a Lay Reader, assists me in administering the chalice. She has completed the training sessions needed to perform this ministry. She has also applied to the Bishop of New York to become a licensed Lay Eucharistic Minister. This involves taking the sacramental items . . . to a person who is sick at home, in a hospital, or nursing home. The Eucharistic Minister performs an abbreviated service of prayers and blessings and administers the chalice to the shut-in. [The beneficiary's] involvement in our worship services also include[s] being a Lector (reader of the lessons for the week).
>
> [The beneficiary] is also in her third year of teaching Catechism classes to our 10-12th grade students. She is reinforcing religious lessons learned during early church school years. Her innovative teaching skills. . . .

> In September 2003, [the beneficiary] became an Advisor for our Hispanic Youth Group . . . [which meets] every Friday evening. Activities include bible study, group talks on ethics and arranging mission outreach activities such as volunteering at the soup kitchen and thrift shop.
>
> [The beneficiary] is also a member of our Vacation Bible School planning committee and n instructor during this month-long endeavor.

describes the above duties in even greater detail in a four-page declaration, in which he stated: "The training that [the beneficiary] has received, both by book and personal experience, has enabled her to perform her duties in the religious occupation of Pastoral Associate."

The Venerable k, Archdeacon of the Missionary Diocese of Honduras, stated:

> [The beneficiary] participated as a Lay Catechist at Espíritu Santo Episcopal Church in Tela, Atlántida, Honduras, while I was vicar of the church during the period from 1991 through 1998, and remained as such until she left earlier this year.
>
> Prior to being licensed as a Lay Catechist, the person is trained, examined and found competent in the following subje[c]ts: The Holy Scriptures, contents and background; The Book of Common Prayer and The Hymnal; Church History; The Doctrine of the Episcopal Church as set forth in the Creeds and An Outline of the Faith, commonly called the Catechism; and Methods of Catechesis.

In a separate letter, stated that the beneficiary "received special training in a Daily Vacation Bible School programme."

In 1999, the beneficiary received a diploma in Early Childhood Education. The instructor for that course, , stated:

> From September of 1997 through June of 1999, I taught a course in Early Childhood Education, here in Honduras, using materials produced by The University of Wisconsin-Stout Campus. . . .
>
> Although the course was not written by the University of Wisconsin with a religious emphasis, because I was teaching it in an Episcopal School setting under the auspices of the Episcopal Church here in Honduras, all the material was modified and tied into using it in a Christian School setting.

On October 27, 2005, the director issued a request for evidence (RFE), instructing the petitioner to "[s]ubmit evidence that the beneficiary's primary duties . . . require specific religious training beyond that of a dedicated and caring member of the congregation or body. The evidence must establish that the job duties are traditional religious functions above those performed routinely by other members."

In response to the RFE, a asserted that the beneficiary's "responsibilities . . . are traditional religious functions within the church relating to its fundamental religious and social outreach ministry to the community." The petitioner submitted copies of previously submitted letters and documents relating to the beneficiary's training.

The director denied the petition on May 20, 2006, based in part on the finding that the petitioner had "not adequately established that the proposed position is a traditional religious occupation, requiring special training." On appeal, counsel argues that the petitioner has amply documented the beneficiary's training that is both religious in nature and essential for the position she holds.

After careful and prolonged consideration of this issue, the AAO finds that the "training" issue has received a disproportionate amount of weight in adjudications of special immigrant religious worker petitions. Obviously, when a given position clearly requires specific training, 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the alien possesses that training; but the issue of training should not be a primary factor when considering the question of whether that position relates to a traditional religious function. Of greater importance is evidence showing that churches or other entities within a given denomination routinely employ paid, full-time workers in comparable positions, and that those positions do not embody fundamentally secular tasks, indistinguishable from positions with secular employers.

Upon review of the evidence, we find that the beneficiary qualifies as a religious instructor and catechist, functions that fall within the regulatory definition of "religious occupation" at 8 C.F.R. § 204.5(m)(2). We withdraw the director's finding to the contrary. We note, at the same time, that this finding is based on the nature of the tasks as described by the petitioner. The issue of the beneficiary's compensation for performing those tasks will be discussed later in this decision.

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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on July 13, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastoral associate throughout the two years immediately prior to that date.

In a letter submitted with the initial filing of the petition indicated that the beneficiary was "in her third year of teaching Catechism classes to our 10th-12th grade students," but did not specify when the beneficiary's work began. Visa documents reproduced in the record show that the beneficiary held an R-1 nonimmigrant religious worker visa, permitting her to work for the petitioner, from January 10, 2002 through January 26, 2006. This status was valid throughout the qualifying period. Nevertheless, evidence of R-1 status is not evidence of employment.

The director, in the October 2005 RFE, instructed the petitioner to submit evidence of the beneficiary's continuous, full-time religious work during the two-year qualifying period. In response, the petitioner

submitted a new statement from . The new statement is broadly similar to the previous one, but in the newer statement stated that the beneficiary was "in her third year of teaching Catechism classes to our 7th through 9th grade students." had previously stated that the beneficiary taught "10th-12th grade" catechism classes. If the beneficiary consistently taught grades 7 through 12, then there would have been no reason to list only some of those grades in a purportedly comprehensive listing of the beneficiary's duties; could just as easily have written "7th through 12th grades" in both letters. The discrepancy between the two letters, therefore, raises questions that, while not insurmountable, are nevertheless of concern.

The petitioner submitted letters vaguely stating that the beneficiary had been a member of the petitioning church for several years, but the petitioner submitted no documentary evidence to show when the beneficiary actually began working for the petitioner full-time in her present capacity.

The director's RFE also included a request for "[a] listing of each religious and secular position which [the petitioner] currently employs, by name, title and salary, to include a copy of [the petitioner's] 2003 and 2004 Form W-3 and a copy of [the petitioner's] payroll roster." The petitioner did not submit the requested evidence, nor did the petitioner explain or account for its failure to submit it. While the beneficiary held an R-1 visa permitting her to work for the petitioner throughout the qualifying period, the petitioner did not submit any documentary evidence to show that the petitioner ever paid the beneficiary during that time.

In denying the petition, the director observed that the petitioner had failed to address the director's request for evidence regarding the beneficiary's past employment. The director found "the record contains no evidence that [the petitioner] has ever relied on salaried employees . . . to perform the work described." On appeal, counsel claims that the petitioner has submitted "overwhelming evidence that shows that [the beneficiary] was compensated for her work for the Church during the past five years." The evidence in question appears to consist of a letter from , a letter from parishioner [1] who shares her home with the beneficiary, and the petitioner's "multiple applications for R-1 visas" filed on the beneficiary's behalf.

We disagree with counsel that these materials constitute "overwhelming evidence." has in numerous instances provided only vague information, and has neglected to answer the director's requests for specific information. has also contradicted himself with regard to which grades the beneficiary teaches, which necessarily demonstrates the fallibility of his personal recall and illustrates that first-hand, contemporaneous documentation is generally to be preferred over the after-the-fact recollections of parties to the petition.

We reiterate that the petitioner failed to answer, or even to address, the director's request for payroll and tax records. The petitioner did not even provide the requested list of paid employees. 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).

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[1] In her letter, ' first name is repeatedly and consistently spelled ' ' but her handwritten signature clearly and distinctly shows the spelling as ' ' We have opted to use the latter spelling.

The record contains no contemporaneous, first-hand evidence that the petitioner has ever paid any employee. With regard to ' letter, does state that she has housed the beneficiary, but she never stated that this housing was, is, or will be contingent on the beneficiary's church work. does not claim to be an official or employee of the petitioning church, nor does she indicate that the church has, does or will contribute toward the support that has provided to the beneficiary. We will revisit letter elsewhere in this decision.

We affirm the director's finding that the petitioner has failed to establish that the beneficiary was a paid, full-time employee of the petitioning church continuously throughout the two-year qualifying period.

ABILITY TO PAY

The final issue concerns the petitioner's ability to compensate the beneficiary. 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 a letter submitted with the initial filing of the petition, stated that the petitioner's " approved the new budget for 2005 which was presented by the Finance Committee. They have budgeted [the beneficiary's] weekly salary checks at $175. A member of the congregation provides [the beneficiary] with room and board." did not identify the "member of the congregation," but the record shows her to be . , however, seemed to imply that the beneficiary no longer resided with her. In a letter dated February 20, 2006,[2] stated: "I have been boarding and rooming free of charge [the beneficiary] since December of 2000 *to December of 2001*. [The beneficiary] *was* a guest at my house for the time been" (*sic*; emphasis added). Although the wording of ' letter implies that the beneficiary only resided with her until December 2001, the Form I-360 petition from 2005 lists address as the beneficiary's own.

8 C.F.R. § 204.5(g)(2) requires evidence that the alien's prospective employer has the financial ability to compensate the alien; it cannot suffice for the petitioner to show that arrangements have been made with third parties to that effect. As we have already observed, does not identify herself as an official or employee of the petitioning church. She does not claim or demonstrate that the petitioning church contributes toward the cost of the beneficiary's food our housing at residence. Finally, she does not state or

[2] The letter was attested by " Commissioner of Deeds In & for the City of Mt. Vernon." does not claim to be a notary, and there is no explanation as to why the attestation of the commissioner of deeds should add any weight or authority to ' letter. The record shows that is the petitioner's Senior Warden.

imply that she provides the beneficiary with room and board solely because the beneficiary works at the petitioning church.

Even if we were to assume, without evidence, that the beneficiary receives food and lodging from only because the beneficiary works for the church, this would still mean that the beneficiary's room and board are provided not by the church or by any entity connected financially with the church, but by a private member of the congregation. If were to leave the area or otherwise become unavailable, then the beneficiary would lose what appears to be her primary means of material support. The petitioner has not explained what arrangements, if any, are in place in the event that is no longer able to house and feed the beneficiary.

The only compensation for which the petitioner has directly claimed responsibility is a weekly salary of $175. has indicated that the beneficiary is to work a 37-hour week. This equates to $4.73 per hour, which is below the legal minimum wage in effect in 2005 and 2006. Furthermore, never specifically claimed that the beneficiary has ever received that salary. He only stated, on more than one occasion, that the church has included that salary (he later called it a "stipend") in the church's 2005 budget.

The petitioner has, on more than one occasion, submitted a copy of its "Proposed Budget" for 2006. A budget, by its nature, is a representation of what an organization intends to spend, rather than documentation of the organization's actual income, expenditures, assets and liabilities. The budget contains only four line items that could reasonably be said to refer to salaries. The items, all under the heading "Personnel," are "Rector's Stipend," "Office Salary," "Maintainance [sic] Salary," "Music Salary – Director" and "Music Salary – Other." The beneficiary is not the rector or the music director, and office work and maintenance are, by regulation, not qualifying religious occupations. The budget does not specifically identify any allocation for the beneficiary or for [3] who is also listed as a pastoral associate on church documents.

The petitioner had originally submitted the budget with the initial filing. Subsequently, the director, in the RFE, requested additional financial documentation. That the director was already in possession of the budget, but asked for more documentation, demonstrated that the budget was not sufficient evidence. The petitioner's response to the RFE did not include any new financial documentation; the petitioner merely submitted a second copy of the same budget.

The director, in the denial notice, observed that the petitioner had not submitted the requested financial documentation. On appeal, counsel states: "we have attached a copy of the most recent annual financial statement, audited by a Certified Public Accountant." Counsel does not explain why the petitioner did not submit this document earlier, when the director, in the RFE, specifically instructed the petitioner to submit an audited financial statement. The document, a "Statement of Financial Position" said to be "[f]rom audited Financial Statements," is dated December 31, 2004, and therefore it was available to the petitioner well over a year before the director issued the RFE. The petitioner offers no explanation for its previous failure to submit the document when the director specifically asked for it.

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[3] The record indicates that , like the beneficiary, resides at house. It appears, from CIS records, that and the beneficiary (whose full name is) are sisters, having both been born, a few years apart, in Honduras, each to a mother named

When the petitioner is put on notice of required evidence and given a reasonable opportunity to provide it for the record before a decision is rendered, but does not submit the requested evidence until the appeal, the AAO is not obliged to consider that evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The petitioner's untimely submission of this document on appeal cannot and does not show that the director erred. At the time of the decision, the director was correct in finding that the petitioner, at the time, had failed to submit the requested evidence. As we have already discussed elsewhere in this decision, the director had requested numerous types of specific information, including information which should have been easily at the petitioner's disposal, such as a list of employees, and the petitioner's response to that request was grossly deficient. Counsel, on appeal, fails to explain or justify these deficiencies, claiming instead that the petitioner's response was adequate and that the earlier approval of R-1 status for the beneficiary created some sort of presumption of eligibility for special immigrant classification. Neither of these claims are persuasive.

For the reasons discussed above, we affirm the director's decision to deny the petition. The appeal will be dismissed 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.