U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

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U.S. Citizenship
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Services

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JUL 01 2004

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
[LIN 02 009 50271]

IN RE: Petitioner: [redacted]
Beneficiary:

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 APPLICANT: 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.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner indicates that it is a church. It seeks classification of 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) in order to employ him as a religious translator.

The director determined that the petitioner had failed to establish that it qualified as a bona fide non-profit religious organization. The director further determined that the petitioner had not established that it has had the ability to pay the beneficiary the proffered wage. Finally, 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 date of the petition.

On appeal, the petitioner submits a statement and additional evidence.

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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

> 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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 th at the request of the organization. All three types of 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 first issue raised by the director is whether the petitioner has established that it is a bona fide non-profit religious organization.

Pursuant to 8 C.F.R. § 204.5(m)(3)(i), each petition for a special immigrant religious worker must be accompanied by evidence that the organization qualifies as a non-profit organization 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 as it relates to religious organizations; or,
>
> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization....

To satisfy the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to satisfy the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of th t relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church containing statement of purpose and a proper dissolution clause.

The petitioner submitted the following documents in support of its claim to be exempt from taxation under section 501(c)(3) of the IRC as it relates to religious organizations:

1. an IRS letter of recognition of tax exempt status addressed to th

2. a New York State Exempt Organization Certificate #105564 recognizing the as exempt from New York State and local sales and use tax;

3. a New York State Exempt Organization Certificate #105564 recognizing the s exempt from New York State and local sales and use tax;

4. a South Carolina Certificate of Incorporation, Nonprofit Corporation issued to the

5. a letter dated January 15, 2003, from Senior Pastor of stating that s exempt from New York State and federal taxation;

6. A letter dated January 15, 2003, from stating that th affiliated with the

7. a letter dated January 15, 2003, from tating that all of the churches affiliated with operate under a group exemption from taxation under section 501(c)(3) of the IRC as it relates to religious organizations;

8. A letter dated April 7, 2003, from in which he states, is an affiliate of and therefore enjoys the benefit of group tax exemption, which is extended to all its branches and affiliates in [the] USA."

The petitioner has not provided an IRS letter recognizing the as exempt from taxation under section 501(c)(3) of the IRC as it relates to religious organizations. Although states in his letters that nd all its branches and affiliates in the United States operate under a group exemption from taxation granted by the IRS he evidence of record does not support his assertion. The IRS letter contained in the record is not a group exemption certificate; it recognizes one specific organization, th as exempt from taxation under section 501(c)(3) of the IRC as it relates to religious organizations. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has not provided copies of all of the documents required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC as it relates to religious organizations. The petitioner has submitted its articles of incorporation including a statement of purpose and a dissolution clause, but it has not provided a copy of IRS Form 1023 and the Schedule A supplement that pertains to churches as required under 8 C.F.R. § 204.5(m)(3)(1)(B). The petitioner has not established that it is a bona fide non-profit religious organization, and the petition must be denied for this reason.

The second issue raised by the director is whether the petitioner has shown that it has had the ability to pay the proffered wage.

Pursuant to 8 C.F.R. § 204.5(g)(2):

> 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 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 annual reports, federal tax returns, or audited financial statements.

In the initial job offer letter dated August 13, 200 Bishop and Founder Pastor of stated, "[y]our salary will be $28,500 yearly including benefits and will be paid by the local church where you will be working." The petitioner has not provided its annual reports, federal income tax returns, or audited financial statements to demonstrate that it has had the ability to pay the proffered salary.

In response to the director's request for additional evidence stated, "[a]s a CEO I hereby certify tha will be paid by our Mission Organization as stated in the Resolution Passed on August 12, 2001." The mission organization referred to by is located at the headquarters o This statement contradicts earlier statement that the beneficiary would be paid by the local church where he would be working in the State of Washington. The petitioner has not provided any explanation for this discrepancy. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The petitioner has provided: an "Income Expense Statement" dated December 31, 2000 statements dated January 1, 2001 and December 31, 2002; and, the bank statements of for the month of October 2002 through March 2003. The petitioner also submitted the bank statements for the located in r the same period. The petitioner has not, however, provided annual reports, federal income tax returns, or audited financial statements for International Family Church headquarters or its affiliate in the State of Washington. Further, these bank statements are not indicative of the petitioner's ability to pay the proffered wage since the filing date of the petition on October 11, 2001. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In view of the foregoing, it is concluded that the petitioner has not established that it has had the ability to pay the proffered wage, and the petition must also be denied for this reason.

The third issue raised by the director is whether the petitioner has established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(m)(1):

> All three types of 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 petition was filed on October 11, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious vocation or occupation from October 11, 1999 to October 11, 2001.

Area Director of Teen Action International, the affiliate organization of in India, stated that the beneficiary has served Teen Action International as a religious translator and has been involved in the church's ministry since 1994 an official of an organization that the petitioner indicates is also affiliated with Teen Action stated:

> has served as a Translator, since 1994. He is involved in translating the gospel literature, Sacraments, ordinances, rituals, and spiritual counseling. He translates gospel sermons, messages, Sunday schools & Bible school teaching materials. He also translates at Youth Camps, Adult Fellowships, Crusades, Seminars and Biblical counseling sessions. He has translated Gospel tracts, songs, messages & other literature and vice versa.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. *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 or 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).

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).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or 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.)

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 or 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 salaried. To find otherwise would be outside the intent of Congress.

Neither has provided any evidence to demonstrate that the beneficiary was a full-time, salaried religious worker during the requisite period. Therefore, the petitioner has not established that the beneficiary was engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition, and the petition must also be denied for this reason.

Beyond the director's decision, the petitioner has not established that the proffered position is a qualifying religious vocation or occupation. The petitioner has not provided evidence to show that the duties of the proffered position are directly related to the creed or beliefs 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, fulltime, salaried occupation within the denomination.

The petitioner has also failed to establish that it has extended a valid job offer to the beneficiary as required under 8 C.F.R. § 204.5(m)(4). The petitioner has not provided a letter from an official of the religious organization in the United States stating clearly how the beneficiary will be paid or remunerated. The petitioner initially indicated that the beneficiary would be paid by the local church where he would be working. Subsequently, the petitioner stated that the beneficiary would be paid by its missionary organization through the church's headquarters in South Carolina. The petitioner has not provided any explanation for this discrepancy in the claimed method of compensation.

In reviewing an immigrant visa petition, Citizenship and Immigration Services must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.