U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

C1

JUL 0 1 2004

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

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 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.

for

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner states 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 minister. 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 letter. The petitioner requested additional time to obtain counsel and to submit additional evidence. To date, no additional evidence has been received into the record. The record will be considered complete.

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 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 t 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 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 May 8, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious vocation or occupation from May 8, 1999 to May 8, 2001.

The petitioner indicates on the Form I-360, Petition for Amerasian, Widow or Special Immigrant, that the beneficiary entered the United States on January 29, 1998, as a nonimmigrant R-1 religious worker with stay authorized to July 28, 2001. The petitioner indicated that the beneficiary had not engaged in unauthorized employment in the United States.

pastor of the petitioning church, stated in a letter submitted with the petition that the beneficiary had been carrying on his vocation as a minister in the Baptist denomination since the fall of 1998. further stated:

> [The beneficiary] has worked as a paid staff member of our church, serving as pastor of the ne of our missions. . . .
>
> Along with his work in our church, [the beneficiary] began a new Thai language work called the of Fort Worth, which later became the It meets in the facilities of th in They have been meeting at alternative times from our church activities, so he has been able to dedicate his extra time to this work.

The record contains a letter dated October 22, 2002, from the Associate Pastor of Missions at Lamar Baptist Church in Arlington, Texas, stating:

> [The beneficiary] is the of hat pertains to The name of this church is This congregation uses th facilities every week.

> Lamar Baptist has opened its doors to receive this Thai congregation with the blessings of the For nearly four years th pened its doors to the Thai congregation as it reached and ministered to the Thai people in the Dallas area. With the expansion of the Thai community into the mid-cities area, it became necessary that the Thai congregation expand its outreach to the Thai people living in located between Dallas and Ft. Worth, was a logical choice for the welcomed the opportunity to allow the Thai congregation to use its facilities. In addition, gives a small financial support on a monthly basis.

The record contains the beneficiary's Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, for 1999, 2000, and 2001, along with an IRS Form 1099-MISC, Miscellaneous Income, reflecting salary paid to the beneficiary by the of DFW in 2001. According to these documents paid the beneficiary $8960 in 1999, $16,640.00 in 2000, and $2550.00 in 2001. The beneficiary received $8492.43 in non-employee compensation from the of DFW in 2001.

In both the request for additional evidence and in the Notice of Denial, the director informed the petitioner that while it appeared that the applicant had worked full-time in 2000 and 2001, the salary paid in the year 1999 was not indicative of full-time work.

On appeal, the petitioner states it only indicated the amount reported on the IRS Form W-2 for 1999, but that the the also sent money to support the beneficiary's ministry. The petitioner, however, did not submit any objective evidence to support this assertion. Because no evidence was submitted to overcome the finding of the director, it must be concluded that the petitioner has not established that the beneficiary was engaged continuously in a qualifying religious vocation or occupation for the entirety of the two-year period immediately preceding the filing date of the petition. The petition must be denied for this reason.

Beyond the decision of the director, the petitioner has not established that it has had the ability to pay the beneficiary the proffered wage. The petitioner has not provided copies of its annual reports, federal income tax returns, or audited financial statements as required at 8 C.F.R. § 204.5(g)(2).

The petitioner also has not provided sufficient evidence to establish that it is a bona fide non-profit religious organization as defined at 8 C.F.R. § 204.5(m)(2). Although the petitioner has provided a letter from an official of the stating that is associated with the and the affiliated with the and is covered by that organization's group tax exemption, no evidence has been provided to corroborate this statement.

The petitioner also has not provided sufficient evidence to establish that the beneficiary was qualified as a minister. The record includes a Certificate of License dated April 16, 2000, issued by Church, licensing the beneficiary to preach. The record also includes a Certificate of Ordination as a minister dated December 17, 2000, from th It is unclear by what authority the

beneficiary was acting as a minister between 1998 and his licensure, during the initial portion of the two-year period for this petition.

Additionally, the petitioner has not established that it has extended a valid job offer to the beneficiary as required at 8 C.F.R. § 204.5(m)(4). The petitioner has not provided any information as to the amount of the beneficiary's salary or how he will be compensated.

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.