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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: LIN 06 052 51128 Office: NEBRASKA SERVICE CENTER Date: MAY 29 2007

IN RE: Petitioner: [redacted]
Beneficiary:

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 Dearnick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a Roman Catholic parish. 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 director of music and liturgy and coordinator of religious education. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition.

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 experience in the religious vocation, professional religious work, or other religious work.

On the Form I-360 petition, the petitioner indicated that the beneficiary had been out of lawful immigration status since December 1992, and that the beneficiary had worked in the United States without permission.

On March 7, 2006, the director issued a request for evidence. The director instructed the petitioner to submit copies of the beneficiary's Form W-2 Wage and Tax Statements, Form I-9 Employment Eligibility Verification document, and evidence that the beneficiary was authorized to work in the United States between December 2003 and December 2005. In response, the petitioner submitted copies of the Forms W-2 and I-9.

Regarding evidence of employment authorization, counsel stated: "We are not including evidence that the beneficiary had authorization from the U.S. Citizenship and Immigration Services to work in the U.S. because he does not have any and because this is *not a requirement* in the regulations for the approval of an I-360 petition." Counsel observed that the beneficiary "did not misrepresent himself on the I-9 form that he completed." We note that a parish official, [redacted] signed the form, thereby attesting, under penalty of perjury, that "to the best of [his] knowledge the employee is eligible to work in the United States." The record does not reveal whether the beneficiary misrepresented himself to [redacted] or whether Mr. Brown knew of the beneficiary's unlawful status and signed the Form I-9 anyway. Counsel has argued that section 245(i) of the Act shields the beneficiary from inadmissibility, but that section of the law does not give employers, whether religious or secular, immunity from perjury laws. While these issues may be worth pursuing in the proper forum, they lie outside the AAO's jurisdiction. In this proceeding, the AAO can offer conclusive findings only with respect to the approval or denial of the petition.

The director denied the petition on June 23, 2006, stating that the beneficiary's "employment in the United States has been unauthorized and, thus, does not meet the regulatory criteria of Title 8, Code of Federal Regulations, Part 204.5(m). The record, as presently construed, does not reflect the beneficiary has held full-time, continuous, authorized employment in the religious vocation for the two-year period preceding the filing of the petition." The director did not dispute that the employment took place; it is well documented in the record. Rather, the director concluded that this employment does not count as qualifying experience because the beneficiary lacked authorization to work in the United States.

On appeal, counsel argues that the regulations in effect at the time of filing, and at the time of the present adjudication, do not require the two years of qualifying employment to have been authorized. Counsel is correct in this assertion. While the beneficiary's lack of lawful status raises questions regarding the beneficiary's admissibility, the visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. When eligibility for the claimed status is established, the petition should be granted. *Matter of O*, 8 I&N Dec. 295 (BIA 1959). Admissibility issues, including the petitioner's claim that the beneficiary qualifies for consideration under section 245(i) of the Act, are to be addressed in the context of an application for an immigrant visa, or for adjustment of status.

We note that a proposed regulation, published 72 Fed. Reg. 20442, 20447 (April 25, 2007), would require an alien's prior experience in the United States to have been authorized under immigration law. That proposed rule, however, has not yet been finalized as of this writing, and did not yet exist at the time the director denied the petition. Because the director cited no valid basis for denial, we will withdraw the director's decision and approve the petition.

ORDER: The appeal is sustained and the petition is approved.