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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:  Office: CALIFORNIA SERVICE CENTER Date: JUL 28 2010

IN RE: Petitioner: 
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)

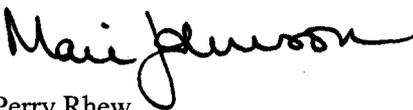
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as improperly filed.

The alien beneficiary seeks classification 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 program coordinator at [REDACTED] Houston, Texas. The director determined that the petitioner had not established that an authorized church official had completed the required attestation included with the petition form.

8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, *affected party* (in addition to U.S. Citizenship and Immigration Services [USCIS]) means the person or entity with legal standing in a proceeding.

8 C.F.R. § 103.3(a)(2)(v)(A)(1) states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee USCIS has accepted will not be refunded.

Part 1 of the Form I-360 petition identifies [REDACTED] as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 10 of the Form I-360, "Signature," has been signed not by any official of the church, but by the alien beneficiary himself. Thus, the alien, and not the church, has taken responsibility for the content of the petition.

The self-petitioning alien did not sign the Form I-290B Notice of Appeal or Motion, and neither did any attorney or accredited representative acting on his behalf. [REDACTED] identified as "a [REDACTED] New Anointing/Nuevo Uncion," signed the appeal form on behalf of her church, which is not an affected party. Because the church has no legal standing in the proceeding, the appeal has not been properly filed, and must be rejected.

Even if the appeal had been properly filed, there are numerous reasons why the petition cannot 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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 September 30, 2012, 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 September 30, 2012, 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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

On the Form I-360 petition, the petitioner admitted that he had entered the United States in 1989, had no current nonimmigrant status, and had worked in the United States without authorization. There is no evidence that the petitioner worked in lawful immigration status or that his experience was authorized under United States immigration law. As such, we conclude that the petitioner has not established any qualifying experience.

The USCIS regulation at 8 C.F.R. § 204.5(m)(5) offers specific definitions of the terms "minister," "religious occupation" and "religious vocation." The petitioner has submitted no evidence to show that his intended work falls under any of those terms.

The regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit a copy of a currently valid IRS determination letter, indicating that the intending employer qualifies as a tax-exempt religious organization under section 501(c)(3) of the Internal Revenue Code of 1986. The petitioner has not submitted any evidence of the church's tax-exempt status. We note that, according to public records

available from the Texas Comptroller of Public Accounts, the church “is not in good standing as it has not satisfied all franchise tax requirements.” Source: online search conducted at <https://ourcpa.cpa.state.tx.us/coa/Index.html> (printout added to record July 27, 2010). Because tax-exempt status applies to recognized organizations rather than informal gatherings, the church cannot qualify for tax-exemption if its corporate status is no longer in effect.

The regulation at 8 C.F.R. § 204.5(m)(10) reads:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The church has stated that the beneficiary would receive “non salaried compensation: housing, clothing and health,” but the petitioner has submitted no evidence, from the IRS or any other source, to establish how the church will provide this compensation. The petitioner has submitted some information regarding the finances of Services to the Community, a business operated by [REDACTED] as sole proprietor. Services to the Community is a separate business entity, engaged in “filling out informational and data processing documents [for] I.N.S.” Its finances are not church assets, available for the beneficiary’s salaried or unsalaried compensation.

Any one of the above issues would, by itself, be sufficient to warrant denial of the petition. Together, they leave no doubt that the petitioner’s essentially skeletal petition cannot be approved. The beneficiary’s lack of lawful status and employment authorization during the two years prior to the petition’s filing date is a facially disqualifying factor.

ORDER: The appeal is rejected as improperly filed.