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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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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 1 8 2010

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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 dismiss the appeal.

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 an assisting priest. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful work experience immediately preceding the filing date of the petition.

On appeal, the petitioner argues that the beneficiary's work experience was lawfully authorized.

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 the beneficiary's qualifying prior

experience, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner filed the Form I-360 petition on August 28, 2009. The beneficiary last entered the United States on August 10, 2008 as an R-1 nonimmigrant religious worker authorized to work at Grace-St. Luke's Episcopal Church. USCIS records do not show that the present petitioner filed any subsequent nonimmigrant petition on the beneficiary's behalf.

The petitioner's initial submission included photocopies of two purported receipts for checks numbered 46424 and 46426, supposedly showing payments of $1,100.00 each to the beneficiary on August 8 and 22, 2009. The dates and amounts on the receipts are in a different font, and visibly out of alignment, compared to the other printing on the receipts. These anomalies suggest alteration of the documents. We note that, on the attestation accompanying the petition, the petitioner claimed 15 employees. This is not readily consistent with the numbering of the paychecks – the petitioner supposedly issued only one check (number 46425) between the two biweekly checks described above.

The petitioner submitted IRS-certified copies of amended income tax returns, indicating that the beneficiary earned $15,103 in salaries and $17,263 in business income in 2007, and $21,098 in salaries and $5,880 in business income in 2008. On both returns, the beneficiary identified his occupation as "student-counsellor." On Schedule C, the beneficiary identified the petitioner as the source of his business income, but the petitioner did not submit copies of IRS Form W-2 Wage and Tax Statements to identify the source of the beneficiary's reported salaries.

On April 2, 2010, the director requested additional evidence, including further documentation of the beneficiary's employment during the 2007-2009 qualifying period. In response, the petitioner submitted further copies of the beneficiary's previously submitted tax documents, and a copy of the beneficiary's 2009 income tax return, on which the beneficiary reported $36,420 in salaries and $9,300 in business income as a "chaplin" (*sic*).

An unsigned letter read, in part:

> In 2008 [the beneficiary] worked for Grace St. Luke's Episcopal Church and [the petitioner].
>
> In the same year in August 2008 [the beneficiary] joined a training program of Clinical Pastoral Education at Methodist University Hospital. . . . [The beneficiary] will be completing this training in August 2010. The CPE training pays those in training $26000 per year. . . . Currently [the beneficiary] works 20 hours in [the petitioning] Church which pays him [an] additional $9600 per year.

The petitioner submitted copies of pay statements dated 2010 from Methodist LaBonheur Healthcare, reflecting the beneficiary's ongoing paid CPE training.

The petitioner also submitted printouts from the Social Security Administration, showing that the beneficiary reported earnings from Methodist Healthcare-Memphis and Support Solutions of the Mid-South throughout the 2007-2009 qualifying period.

The director denied the petition on June 28, 2010, stating that the beneficiary failed to maintain R-1 nonimmigrant status by working, without authorization, for other employers during the two-year qualifying period. On appeal, [redacted], associate rector of the petitioning church, states that the beneficiary's work at Methodist Hospital "was part of his training as a Minister" and claims that the beneficiary "sought O.P.T. authorization to work in work related to his training." The abbreviation "O.P.T." refers to optional practical training. Optional practical training, however, is employment that may be authorized only as a condition of an alien's status as an F-1 nonimmigrant student. 8 C.F.R. §§ 214.2(f)(10), 214.2(f)(11), 274a.12(c)(3). Employment authorization for optional practical training does not apply to R-1 nonimmigrant religious workers.

An R-1 nonimmigrant may be employed only by the religious organization through whom the alien obtained that status. *See* 8 C.F.R. § 274a.12(b)(16). An R-1 nonimmigrant may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. *See* 8 C.F.R. § 214.2(r)(13). More generally, the USCIS regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. Therefore, because the beneficiary's R-1 status permitted him to work only for [redacted] any employment for any other employer (including the present petitioner) would have violated the beneficiary's status.

The beneficiary previously held F-1 nonimmigrant status, with accompanying employment authorization for optional practical training. Once he entered the United States on August 10, 2008 with an R-1 visa, however, the beneficiary assumed R-1 nonimmigrant status, which superseded any prior status. Once the beneficiary ceased to be an F-1 nonimmigrant student in August 2008, optional practical training no longer applied. As soon as he became an R-1 nonimmigrant, the beneficiary's employment authorization was limited solely to **employment with** his petitioning employer. Any outside employment, including a continuation of the work that he had previously pursued as optional practical training, constituted a failure to maintain his R-1 nonimmigrant status. The petitioner has admitted that the beneficiary engaged in outside employment, and therefore the petitioner has effectively conceded the stated basis for denial of the petition. We will, therefore, agree with the director's finding that the beneficiary violated his status and did not engage in continuous, authorized employment during the two years immediately preceding the filing of the petition, as required by 8 C.F.R. § 204.5(m)(11). For this reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.