

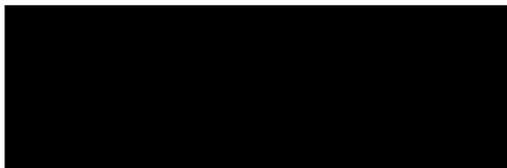
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



C1

DATE: Office: CALIFORNIA SERVICE CENTER

APR 19 2011

FILE:
WAC 09 182 50525

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.

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, with a fee of \$630. 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 and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 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 leader of its praise ministry. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

The petitioner submits a letter and additional documentation in support of the appeal.

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 issue presented on appeal is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines “religious occupation” as an occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

In its June 9, 2009 letter submitted in support of the petition, the petitioner stated that it sought to bring the beneficiary to the United States “[s]o that he can come to our church, to put forth with us in the ministry of music theoretical and practical education of the different instruments, and of the sound systems, that are used in the development of our different meetings.” The petitioner submitted no other documentation or information about the proffered position.

In a request for evidence (RFE) dated August 21, 2009, the director instructed the petitioner to submit the following additional information about the proffered position:

Proffered Position: What is the beneficiary’s job title? Provide a **detailed description** of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function.

Traditional Religious Occupation: Provide evidence that the duties primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination. Provide evidence that the duties are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. [Emphasis in the original.]

In response, the petitioner submitted letters from several organizations in Colombia that attested to the beneficiary’s work in the praise ministry. A September 21, 2009 letter from [REDACTED] financial and administration manager of the Colombia Bible Society, stated that the beneficiary “participated in the ministry . . . blessing us through [the] ministry in the praise and playing the piano.” [REDACTED] pastor general of Centro Familiar de Adoracion, stated in a September 9, 2009 letter that the beneficiary was the “former head of the ministry of praise in the part of management and motivation of other group members.” In an

August 26, 2007 certificate.

stated that the beneficiary "is minister of praise in our congregation." Finally, an August 27, 2007 certificate from of the Centro Internacional de Restauracion Familiar, certified that the beneficiary "has acted as minister in the area of praise." Therefore, we find that the petitioner has submitted sufficient documentation to establish that the position of minister of praise is recognized as a religious occupation within its denomination.

The petitioner also submitted a description of the work to be performed in the position:

1. To minister musically in the different meetings that are carried out in our congregation, as Tuesdays, Thursdays and Fridays are the days of our regular meetings.
2. In each meeting he must be at the church two hours before; to organize everything that got to do with the instruments, and have short tests before initiating the meeting.
3. He will have practice twice per week to train others.
4. He will have practices with other ministers, who are involved in the musical area, at least for three hours, twice per week, according to schedules previously established.
5. Also he will be involved in the educative area helping to instruct others in the Christian doctrine. This will be taught on Saturdays and Sundays that are the days of instruction in the church.
6. To minister in special events such as: fasting, seminaries, workshops and others.
7. As praise director must be the one in charge of taking care of the instruments that compose the orchestra of the congregation, that they will be well kept.

The petitioner provided a weekly schedule for the beneficiary that includes 4 hours of "instruments arrangement," 8.5 hours of "service ministration," 3 hours to "assemble of the instruments," 3 hours of "instructing others," 2 hours for "classes" and 2 hours for "instrument maintenance."

In denying the petition, the director stated that the petitioner had failed to provide a detailed job description and failed to submit evidence to establish that the duties of the proffered position relate to a traditional religious function and that the position is recognized as a religious occupation within its denomination.

On appeal, the petitioner states that it has previously provided the requested information and resubmitted copies of the requested documentation.

As discussed previously, the petitioner submitted sufficient documentation to establish that the position of minister of praise exists within its denomination. None of the letters, however, provide details of the nature and duties of the position. The job description provided by the petitioner does not contain sufficient information to establish that the duties of the position primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. The documentation provided by the petitioner does not indicate what the duty of "service ministration" entails and it does not correlate with the days that the petitioner states are the days of its regular "meetings." Further, the petitioner states that the beneficiary will be "helping to instruct others in the Christian doctrine" on Saturday and Sunday; however, the schedule includes 3 hours for "instructing others" on Wednesday. The petitioner provides no other details regarding the duties involved in "instructing others."

The petitioner has submitted insufficient documentation to establish that the duties of the proffered position primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. Therefore, it has failed to establish that the proffered position is a religious occupation as defined by the regulation.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked 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 petition was filed on June 25, 2009. Accordingly, the petitioner must establish that the beneficiary

was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary resided in Bogota, Colombia. Therefore, the evidence of the beneficiary's qualifying work experience must be comparable to the tax documentation required for employment in the United States.

As previously discussed, the petitioner submitted letters from several organizations attesting to the beneficiary's service with them. However, the petitioner submitted no documentation of any salaried or non-salaried compensation received by the beneficiary from any of these organizations or how he provided for his own support. Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately prior to the filing of the visa petition.

The petitioner has also failed to establish how it intends to compensate the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

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.

On the Form I-360, the petitioner stated that the beneficiary's compensation would be in the form of food, lodging, "dress and an offering in dollars sporadically." In its June 9, 2009 letter, the petitioner stated that all of the beneficiary's "expenses will be covered by our church as much as those of his coming like his support house, feeding transportation and health." The petitioner submitted no documentation with the petition to establish how it intended to provide compensation to the beneficiary.

In response to the RFE, the petitioner stated:

The church will take care of the expense that required for [the beneficiary] to come as a servant of the Lord. About his lodging, food, clothing, visits to the doctor and all that is concerning his adaptation, such as English classes recreation and transportation etc. will be supported by the pastor. We clarify that in the measurement in which the church is developed it will have the disposition to compensate economically.

The petitioner also submitted uncertified copies of its financial statements for July 2009 and a general balance sheet that does not specify the period. Furthermore, the petitioner's response suggests that the beneficiary will receive his compensation from the pastor. The regulation at 8 C.F.R. § 204.5(m)(7)(xii) requires the petitioner to attest that it has both the intention and the ability to compensate the beneficiary. Accordingly, the beneficiary's compensation must be paid by the petitioning organization and not by the pastor or any other individual church member.

The petitioner has failed to establish how it intends to compensate the beneficiary.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.