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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**

[REDACTED]

C1

DATE: DEC 08 2011

Office: CALIFORNIA SERVICE CENTER

[REDACTED]

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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:

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 pastoral coordinator of health ministries and parish life. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

On appeal, counsel asserts that the director “erred in considering the nature of the work done by [the beneficiary] without considering the tradition and the nature of the congregation in the Church.” Counsel submits a brief 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 July 16, 2009 letter, the petitioner, through its vicar the stated:

[The beneficiary] is employed as a Pastoral Coordinator of Health Ministries and Parish Life. As part of her duties she performs a variety of chores, including:

1. Organizing a training class for Lay Pastoral Caregivers.
2. Scheduling the monthly Circle of Care meetings.
3. Helping in locating and identifying duties and functions for volunteers.
4. Coordinating communication and facilitating the coordination between members of the congregation and caregivers.
5. Coordinate parish activities involving issues of health and wellness.
6. Leading textile workshops and facilitating networking and fellowship in our textile support group.
7. Helping develop budgets for parish events and helping parishioners learn financial basics on the computer.
8. Leading Bible studies.

Her daily routine includes meeting with parishioners, coordinating volunteers, working on the weekly bulletin, budgeting parish events, coordinating with health professionals and whatever needs to be done to fulfill the chores listed above.

In a November 23, 2009 request for evidence (RFE), the director instructed the petitioner to provide additional evidence regarding the proffered position as follows:

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.]

The petitioner submitted several letters of reference for the beneficiary including:

1. An August 15, 2007 “Declaration of Intent” for the Community of Hope. The document indicates that “‘pastoral care’ is defined, as ‘when a person is being ‘present’ in a listening, compassionate, non-controlling manner to an individual or group for the purpose of consciously or unconsciously representing God to them and seeking to respond to their spiritual needs.’”
2. A June 30, 2009 letter from the [REDACTED] the Arlington Office Coordinator of the Hispanic Committee of Virginia, verifying that the beneficiary “is a current volunteer with [the organization] since 2004.” [REDACTED] stated that the beneficiary “is skilled in office work and has also volunteered at our committees Gala.”
3. A July 20, 2009 letter from the executive director of the Hispanic Institute for Blindness Prevention, Inc., certifying that the beneficiary “as the coordinator for the health ministry of the San Jose Episcopal Church, has volunteered” with the organization for 2008 and 2009. The letter indicates that the beneficiary organized “several vision screening and general health screening sessions in Virginia to provide people, especially the needy, an opportunity to access vision care and preventing blindness”. . . .
4. A July 22, 2009 letter from [REDACTED] from the Northern Virginia Mental Health Institute verifying that the beneficiary has “been a chaplaincy program volunteer” at the organization “since the winter of 2009” and “to commend your leadership in coordinating the pastoral care volunteer group from your parish.” [REDACTED] further stated:

The pastoral group . . . has brought much support and healing to our Spanish speaking patients and families, as well as to others in the English speaking population. These patients have been most appreciative to have an opportunity to attend a monthly Spanish language worship service and then participate with members of our group in conversation and prayer.

5. A July 22, 2009 letter from [REDACTED] who states that the beneficiary “is active in the Arlington community, conducting outreach to a diverse Hispanic population and proving training opportunities and counseling services.”

6. A July 22, 2009 letter from [REDACTED], who states that the beneficiary “works as a secretary and . . . is in charge with development of Health and Educational Programs for the Episcopal Church of San José.”
7. A July 28, 2009 letter from [REDACTED] program manager of the Congregational Health partnership, in which she states that the beneficiary is the Hispanic Ministry Coordinator for the Episcopal Church San Jose and that she has been developing the position since 2008. She further states that the beneficiary “is a great leader in her congregation, developing health related activities to the community.”
8. A July 24, 2009 letter from [REDACTED], who states that the beneficiary “is in charge of coordinating bible studies weekly, many activities programmed through the year, and she is helpful on Sunday Mass. [She] is very organized, responsible, and she knows every step of her office duties. . . . [S]he offers her free time in volunteer activities, such as: health programs, learning programs, and community projects.”
9. An undated letter from [REDACTED] who states that he is a member of the Episcopal Church San Jose and the beneficiary “is in charge [of] all administrative tasks for our church, helping member[s] and not member[s of] our community and she is part of our children program.”

The petitioner also submitted a copy of an August 13, 2009 certificate from the Diocese of Virginia licensing the beneficiary as a lay Eucharist visitor and minister, and an August 13, 2009 certificate licensing her as a lay catechist. In a July 29, 2009 letter, the treasurer of [REDACTED] stated:

[The beneficiary] is currently working as a pastoral administrator and is in charge of the running the office activities, that include, helping our congregants, Organizes fund raising activities as well as our bible study and she is the main liaison with different groups of the church. Her schedule runs as follow: during the day she tends to answering correspondence and church related activities.] She manages community activities and coordinates meetings of the various church groups and organizations. She is also responsible for making bank deposits and paying the church bills. On Sundays [the beneficiary] works with the pastor during the worship services and other religious celebrations.

The director determined that the petitioner had not established that the duties of the proposed position relate to a traditional religious function and denied the petition. On appeal, the petitioner submits a March 3, 2010 letter from [REDACTED] in which he states:

[The beneficiary] is working as the [REDACTED] [REDACTED] She has been licensed to be a Lay Eucharistic minister and . . . as such she has the role of preparing people for Baptism, Confirmation,

Reception and Reaffirmation of Baptismal Vows. She can also take Holy Communion to those who are unable to attend worship services.

[The beneficiary] also provides assistance to the [pastor] in areas of pastoral care, leading Bible studies and coordination many programs in the areas of health and wellness and spirituality.

The petitioner also submits a March 3, 2010 letter from [redacted] who expands further on the beneficiary's duties in the proffered position. In addition to the duties previously discussed, she stated that the beneficiary leads bible studies, leads worship services in Spanish at the Mental Health Hospital once a month, visits the sick and provides them with a listening ear and pastoral presence, and that she is licensed to take Holy Communion to the sick. She further states:

Her daily routine includes meeting with parishioners, holding Bible studies, teaching Baptism and Confirmation classes, coordinating volunteers, working on the weekly bulletin, budgeting parish events, coordinating with health professionals, pastoral care visits and whatever needs to be done to fulfill the many pastoral demands placed on her weekly.

Counsel asserts:

The letter filed by the Bishop on behalf of the beneficiary characterizes her as a Pastoral Coordinator and licensed Eucharistic and Catechist. . . . There is no doubt that the church, in this case [through] the Bishop, understands the beneficiaries' [sic] work as a ministry and as an integral part of the ministry of the Church and as a consequence as a religious function that is done by the beneficiary.

Counsel's argument is not persuasive. The evidence clearly reflects that the beneficiary's primary duty is administrative in nature. Although the director instructed the petitioner to provide a schedule that outlined the hours that the beneficiary spent performing each duty, the petitioner failed to do so. Although the evidence indicates that the position has varied duties, the beneficiary cannot perform all of these duties every day. Further, many of the duties, as indicated by the letters of support, reflect that the beneficiary performed these duties in a volunteer capacity rather than as a required part of her duties.

The petitioner has submitted insufficient documentation to establish that the proffered position is a religious occupation within the meaning of the regulation.

Beyond the decision of the director, the petitioner has not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the 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 September 28, 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 last entered the United States on October 4, 1999, and that she was out of status. In its July 16, 2009 letter, the petitioner stated that the beneficiary had begun working for the petitioning organization in 2006. The petitioner submitted copies of IRS Form 1099-MISC, Miscellaneous Income, indicating that it paid the beneficiary nonemployee compensation of \$9,013.40 in 2007 and \$11,000 in 2008.

As the beneficiary was not in a lawful immigration status, any work she performed in the United States interrupts the continuity of her work experience for the purpose of this visa petition. Further, the petitioner has not established that the proffered position is a religious occupation.

Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The petitioner also does not indicate the compensation that is associated with the position. Although the petitioner attested that it would provide the beneficiary with compensation at a level that would ensure she does not become a public charge, as required by the regulation at 8 C.F.R. § 204.5(m)(7), its failure to state the level of compensation prevents USCIS from evaluating the accuracy of its claim.

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.