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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]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 03 2011

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, 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 employment-based immigrant visa petition was denied by the Director, California Service Center, and 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 a resident minister. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

The petitioner asserts that the director erred in concluding that the beneficiary did not work as a minister for the two years immediately preceding the filing of the petition. The petitioner 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 is whether the petitioner has established 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 U.S. Citizenship and Immigration Services (USCIS) 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 December 18, 2008. Accordingly, the petitioner must establish that the beneficiary had been 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.

With the petition, the petitioner submitted a December 17, 2008 "certificate of service record" outlining the beneficiary's previous assignments. The certificate indicates that for the two years prior to the date the petition was filed, the beneficiary served as assistant resident minister at [redacted] as resident minister at [redacted] and had been serving as resident minister at [redacted] since [redacted]. The petitioner submitted copies of checks that it made payable to the beneficiary in the amount of $369.39 approximately every week beginning on August 22, 2008 through December 12, 2008. The checks do not reflect that they were processed by the bank. The petitioner submitted no other documentation to establish that the beneficiary worked in a qualifying religious occupation or vocation during the qualifying period.

In response to the director's March 13, 2009 request for evidence (RFE), the petitioner submitted a copy of an IRS Form W-2 that it issued to the beneficiary in 2008 indicating that it paid the beneficiary $20,127.14 in wages and provided a parsonage or parsonage allowance valued at $5135.52. The petitioner provided an uncertified copy of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for 2008, on which he listed these wages. An account transcript from the IRS reflects that the beneficiary did not file an income tax return for the year 2007 and the petitioner submitted no documentation to reflect that the beneficiary received any compensation in 2006 and 2007.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary worked as a resident minister throughout the two-year period prior to the filing of the petition. The director determined that the beneficiary had worked as an assistant resident minister from September 2006 to November 2007.

On appeal, the petitioner states that the beneficiary's work as an assistant resident minister does not imply that the position was "anything less than the 'traditional' Minister position," that the beneficiary was one of 10 ministers at the [redacted] congregation, and that only one minister was given the title pastor with all others designated as assistant ministers. The petitioner submitted an August 4, 2009 certification signed by [redacted] its secretary of foreign affairs, certifying that "[redacted] used in larger congregations where usually only the top Minister in the congregation is called Resident

Minister or Pastor and the other Ministers in the congregation are called Assistant Resident Ministers."

The regulation at 8 C.F.R. § 204.5(m)(4) does not require that the qualifying two year work be in the same position as the proffered position. Accordingly, we withdraw this statement by the director. However, we find that the petitioner has not provided sufficient documentation to establish that the beneficiary worked in any capacity from December 18, 2006 through December 31, 2007. IRS records indicate that the beneficiary did not file a 2007 federal tax return and the petitioner submitted no documentation of any compensation paid to the beneficiary during December 2006 and in 2007 as required by the regulation at 8 C.F.R. § 204.5(m)(11).

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.