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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

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 04 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:

[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,

Mari Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director determined that the petitioner had failed to submit required evidence, and therefore the director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner is a Sikh temple. 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 priest. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

In response to the certified decision, the petitioner submits a letter from a temple official, copies of financial and tax documents, and background information.

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 . . . ; and
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> (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 petitioner filed the Form I-360 petition on December 26, 2006. On that form, the petitioner indicated that the beneficiary had never worked in the United States without authorization. The record shows that the beneficiary entered the United States on September 3, 2005 as a B-1 nonimmigrant visitor for business. On February 22, 2006, the petitioner filed a Form I-129 petition, with receipt number [redacted] seeking to classify the beneficiary as an R-1 nonimmigrant religious worker. U.S. Citizenship and Immigration Services (USCIS) approved that petition, and granted the beneficiary R-1 nonimmigrant status from June 26, 2006 through March 1, 2009.

At the time the petitioner filed the petition, the U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) required the petitioner to establish that the

beneficiary continuously engaged in qualifying religious work throughout the two years immediately preceding the petition's filing date.

The petitioner submitted copies of various letters regarding his activities since 1980. None of these letters specifically addressed the beneficiary's work between December 2004 and June 2006. An uncertified translation of an October 2005 newspaper article indicated that the beneficiary "played a very active role in" a fundraiser for earthquake victims. Without a certified translation, the document has no evidentiary weight. *See* 8 C.F.R. § 103.2(b)(3). Even so, information about a one-time fundraising event cannot establish continuous employment.

In an affidavit, the beneficiary stated: "I initially entered the U.S. in September, 2005 to perform religious ministry, during which time I was not employed in the U.S., solely performing religious services and residing at the religious facilities." The beneficiary then named four [redacted] California where he claimed to have worked between September 4, 2005 and January 20, 2006. The beneficiary stated that he began working at the petitioning temple on January 21, 2006.

The petitioner submitted photocopied checks from the petitioner, payable to the beneficiary. Most of the checks showed the monthly salary amount of $750, but some showed smaller amounts for other purposes. The reproduced checks do not show evidence of processing for payment. The petitioner also submitted copies of cash withdrawal slips, annotated as being for the beneficiary's salary.

On April 25, 2007, the director instructed the petitioner to submit, among other things, evidence and detailed information about the beneficiary's work history from December 26, 2004 to the filing date, including evidence of payment or material support. In response, counsel repeated the assertion that the beneficiary "was in B-1 status performing religious ministry without payment" until USCIS granted him R-1 nonimmigrant status.

The petitioner submitted another copy of the beneficiary's affidavit, in which he listed five work locations from September 4, 2005 onward. The director did not identify where the beneficiary worked between December 2004 and September 2005, or submit any evidence of employment for that period. An uncertified copy of the beneficiary's 2006 income tax return shows $8,407 in business income for that year.

The director denied the petition on August 15, 2007, in part because the petitioner had not submitted sufficient evidence of the beneficiary's continuous employment during the two-year qualifying period. The director came to this conclusion because the petitioner submitted nothing from the four California temples named in the beneficiary's affidavit, and because "no information regarding the beneficiary's work history from December 6, 2004 to September 4, 2005 was provided."

On appeal from that decision, the petitioner submitted a new affidavit in which the beneficiary stated that he worked at [redacted] from October [redacted] to September [redacted], followed by the various aforementioned temples in California and then the petitioning temple in Utah.

Officials of the various temples provided brief letters, attesting that the beneficiary worked at the various temples during the respective periods claimed. Most of these officials did not mention the terms of the beneficiary's compensation, or provide evidence thereof. [redacted] of [redacted] referred to the beneficiary as a "volunteer priest," implying that the beneficiary received no pay.

While the appeal was pending, USCIS published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

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

> *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 or certified copies of income tax returns.
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> (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.

A nonimmigrant in the United States may not engage in any employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment. 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. 8 C.F.R. § 214.1(e). Therefore, the petitioner must show that all of the [redacted] activities in the United States, whether as a B-1 or R-1 nonimmigrant, have been consistent with the nonimmigrant status he held at the time of those activities.

On December 16, 2008, the AAO remanded the petition to the director for a new decision under the revised regulations. On February 4, 2009, the director notified the petitioner of the revisions, and quoted many of the new regulations, including 8 C.F.R. § 204.5(m)(11), in full. In response, the petitioner submitted additional copies of previously submitted letters, and uncertified copies of the beneficiary's 2007 and 2008 income tax returns, but no new evidence of continuous, authorized work during the 2004-2006 qualifying period.

The director again denied the petition on April 7, 2009, stating that the petitioner had submitted no qualifying evidence of the beneficiary's lawful employment, compensation, or self-support from December 2004 to December 2006. The director certified the decision to the AAO for review.

In response to the certified decision, counsel claims: "The Petitioner has submitted voluminous evidence that the Beneficiary has been [redacted] . . . [for more than] 20 years, over 19 of which were prior to December 26, 2004." We find no such "voluminous evidence" in the record. We find a handful of witness letters, each rarely exceeding a few sentences in length. The bulk of the existing record is the result of multiple resubmissions of the same exhibits. These redundant submissions may make the record more "voluminous," but not more substantial.

The petitioner submits an IRS transcript of the beneficiary's 2006 income tax return, showing that he earned $8,407 that year, consistent with the uncertified copy submitted previously. The petitioner's remaining submissions on appeal are irrelevant to the issue of the beneficiary's employment during the 2004-2006 qualifying period.

The petitioner has submitted IRS documentation to establish its employment of the beneficiary during the latter half of 2006, but has submitted nothing of a similar caliber for the first three quarters of the two-year qualifying period. The regulation at 8 C.F.R. § 204.5(m)(11) and its subclauses list the required or desired documentation to show qualifying employment, and the petitioner has not submitted that evidence.

We note that the beneficiary claims he "was not employed in the U.S.," but was "residing at the religious facilities" in California where he worked. The Board of Immigration Appeals ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). Therefore, if the beneficiary worked

under such an arrangement in 2005-2006, then he was employed in the United States before he received his R-1 nonimmigrant status. The petitioner did not submit any evidence to show that, during the period described above, any overseas employer compensated the beneficiary or reimbursed the various United States temples for their expenses incurred by hosting the beneficiary.

For the reasons discussed above, we agree with the director's finding that the petitioner has not submitted sufficient evidence of the beneficiary's qualifying employment during the two years immediately preceding the filing of the petition, or that the beneficiary was authorized to engage in employment during his entire stay in the United States during that period.

Beyond the director's decision, the petitioner's latest submission, in response to the certified decision, raises another issue of concern that precludes approval of the petition. In this case, the petitioner has not established that the beneficiary intendes to work solely as a minister. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 petitioner submits an IRS transcript of the beneficiary's 2007 income tax return and accompanying documents. According to IRS Form W-2, Wage and Tax Statement, [redacted] down the street from the petitioner in Taylorsville, Utah, paid the beneficiary $900 in 2007. The regulation at 8 C.F.R. § 274a.12(b)(16) allows an R-1 nonimmigrant to work only for the religious organization that obtained R-1 status for the alien. Under 8 C.F.R. § 214.2(r)(13), an R-1 nonimmigrant may not receive compensation for work for any religious organization other than the R-1 petitioner or the alien will be out of status. More generally, under 8 C.F.R. § 214.1(e) a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. Therefore, the beneficiary's documented employment with [redacted], appears to be in violation of his R-1 nonimmigrant status. Because this work took place in 2007, after the filing date, it does not directly relate to the beneficiary's experience during the two-year qualifying period. Nevertheless, the beneficiary's pursuit of secular employment while in R-1 nonimmigrant status raises obvious immigration issues. Not only does his unauthorized employment reveal that he has violated the terms of his nonimmigrant status, but it suggests that he does not intend to work solely in the vocation of a minister as required by section 101(a)(27)(C)(ii)(I) of the Act and 8 C.F.R. § 204.5(m)(2)(i). For this additional reason, the petition may not be approved.

The AAO will affirm the certified denial of the petition for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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, the petitioner has not met that burden.

ORDER: The director's decision is affirmed. The petition is denied.