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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

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 16 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,

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 [redacted] belonging [redacted] described as a voluntary association of non-denominational Pentecostal churches. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 03(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a music teacher. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel and two letters.

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 director's decision revolves around the issue of whether the petitioner seeks to employ the beneficiary in a qualifying 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.

The petitioner filed the Form I-360 petition on May 18, 2009. An accompanying employer attestation includes the following information about the beneficiary's intended work:

Title of position offered:
MUSIC TEACHER

Detailed description of the alien's proposed daily duties:
Teach various wind and string instruments, prepare our group singers and musicians for our Services. Establish a school of Music in our school.

Description of the alien's qualifications for the position offered:
[The beneficiary has] been teaching music for about 15 years. He has [been] forming musicians in various churches in the body of Christ. He has been helping us also for 2 years. He is a certified music teacher.

The petitioner submitted copies of certificates indicating the beneficiary's past involvement in church music, but no evidence that the beneficiary ever received payment for his work with church music.

The director denied the petition on August 15, 2009, finding that the petitioner had not established that the beneficiary's duties as a music teacher relate to a traditional religious function in the petitioner's religious denomination, or "that the position is traditionally a permanent, full-time, salaried occupation within the denomination." The director acknowledged "[t]he beneficiary's duties with the petitioning organization may have carried a religious significance," but found that this did not "equate to a traditional religious occupation."

On appeal, counsel asserts that the beneficiary "worked on a volunteer basis for the church as a Music Director for two years" before the petition's filing date. Counsel describes previously submitted exhibits, but does not directly claim that the beneficiary has ever received compensation for teaching music in a religious context.

Counsel presents various arguments about the role of music in religious services, but no evidence of any kind to show that the petitioner's religious denomination considers music teaching to be a paid occupation rather than a volunteer activity. Indeed, counsel acknowledges that the beneficiary's past experience with the petitioner has been as a volunteer. Such volunteer activities may have religious significance, but that does not mean that those activities are "recognized as a religious occupation within the denomination" as the regulatory definition requires. By way of analogy, attending weekly worship services and receiving communion have obvious religious significance, but no one could seriously claim that those activities amount to a recognized religious occupation. The petitioner cannot avoid this regulatory requirement merely by claiming that, in the future, it will pay the beneficiary to perform a function that has, heretofore, always been an unpaid volunteer function.

[redacted], pastor of the petitioning church, stated that the beneficiary "began working as a volunteer with our church" in "May 2007," and that "[t]he role of music director is historically very significant within [redacted], pastor of [redacted] congregation [redacted] likewise attests to the religious significance of music without ever showing that music teachers typically receive compensation within the denomination.

Other materials in the record bear consideration on this point. In July 2009, while the petition was pending, the beneficiary filed a Form I-485 adjustment application. That application included Form G-325A, Biographic Information. Asked, on that form, to describe his employment over the past five years, the beneficiary provided the following information:

Name of Employer	Occupation	From	To
None		[blank]	Present Time
[redacted]		Nov. 2008	Jan. 2009
		Sept. 2008	Nov. 2008
		April 2002	Nov. 2006

It is highly significant that the beneficiary did not claim any religious employment, either in the United States or in his native Jamaica. His only claimed employment that involved music was at a vacation resort in Montego Bay, Jamaica. As we will discuss in more detail later in this decision, the beneficiary held employment authorization from July 2008 onward, at which point the petitioner could lawfully have employed him, but instead the beneficiary worked in obviously secular jobs as described above.

The petitioner has devoted the bulk of the appeal to arguing the religious significance of music – a point that the director readily acknowledged in the denial notice. The petitioner has not shown that its religious denomination recognizes the beneficiary's musical work as a religious occupation, and the record strongly suggests the opposite. We therefore agree with the director's finding that the petitioner has not shown that the beneficiary's intended position qualifies as a religious occupation.

Beyond the director's decision, review of the record reveals other disqualifying factors, each of which would, by itself, constitute sufficient grounds for denial of the petition. The AAO may identify additional grounds for denial beyond what the Service Center identified 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 USCIS regulation at 8 C.F.R. § 204.5(m)(10) reads as follows:

> *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 [Internal Revenue Service] 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.

In a letter accompanying the initial filing of the petition [redacted] tated that the beneficiary would receive "$250 weekly with room and board." The petitioner, however, has not submitted any documentation, from the IRS or any other source, to establish that the petitioner can meet this rate of compensation. The petitioner also has not provided evidence that it controls, or can afford, a residence for the beneficiary. Therefore, the petitioner has failed to meet the regulatory requirement at 8 C.F.R. § 204.5(m)(10).

Finally, there is the issue of the beneficiary's past experience. The 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) 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 documentation that the alien received a salary, such as an IRS Form W-2 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.

As we have already noted, the petitioner acknowledges that the beneficiary was an uncompensated volunteer throughout the two-year qualifying period. The petitioner has not shown, or claimed, that the beneficiary meets the self-support requirements outlined at 8 C.F.R. § 204.5(m)(11)(iii).

Furthermore, the regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) require past experience in the United States to have been authorized under United States immigration law. Therefore, we must consider the beneficiary's nonimmigrant status and his activities during the qualifying period. The record shows that the beneficiary entered the United States on July 26, 2007 as an F-1 nonimmigrant student, for the purpose of attending Grambling State University in Grambling, Louisiana. (This was a re-entry following his initial admission on December 19, 2006.) F-1 nonimmigrant status does not automatically convey employment authorization. The USCIS regulation at 8 C.F.R. § 214.2(f)(9) details the conditions under which an F-1 nonimmigrant may obtain employment authorization. The record also contains a photocopy of a Form I-766 Employment Authorization Card, valid from July 15, 2008 to May 30, 2009. The record contains no evidence of prior USCIS employment authorization, or of any change of nonimmigrant status.

The beneficiary's F-1 nonimmigrant status permitted him to remain in the United States for the sole purpose of studying at Grambling State University in Louisiana. The record, however, indicates that the beneficiary resided in Grambling for less than six months before he relocated to Waldorf, Maryland in mid-2007. The beneficiary was maintaining F-1 nonimmigrant status only while he was making normal progress toward completing a course of study. *See* 8 C.F.R. § 214.2(f)(5)(i).

The petitioner has not shown how long the beneficiary maintained his F-1 nonimmigrant status after he moved to Maryland. The beneficiary did not hold employment authorization for most of the qualifying period, and according to the beneficiary's Form G-325A, once he held employment authorization he worked only in secular [redacted] The record indicates that the beneficiary did not continuously engage in authorized employment with the petitioner or any other religious institution during the 2007-2009 qualifying period. This, by itself, is a facially disqualifying circumstance, and therefore grounds for denial of the petition and dismissal of the appeal.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.