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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: MAR 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 an Eastern Orthodox community. 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 is a fully qualified minister, or had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits arguments from counsel and various supporting exhibits.

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
>
> (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 first basis for denial concerns the beneficiary's status as a minister. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(7)(ix) requires an official of the intending employer to attest that the beneficiary is qualifies for the position offered. The USCIS regulation at 8 C.F.R. § 204.5(m)(9) states:

> *Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit the following:
>
> > (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
> >
> > (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited

theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

The petitioner filed the Form I-360 petition on November 14, 2007. The initial filing included a letter from [redacted], president of the petitioning entity. The archbishop's letter was on the printed letterhead of the Holy Monastery of Saint Nectarios, showing the same street address shown on Form I-360. The printed letterhead also bore the name of the Archdiocese of America and Canada of the Autonomous Greek Orthodox Church. [redacted] stated:

> [A]s of March 25, 2007, [the beneficiary] was canonically received into the ranks of the clergy of the [petitioner] located at [redacted].
>
> Previous to his coming to the United States, he was . . . an ordained priest "in good standing" by [redacted] The [redacted] within which the [petitioner] operates, recognizes the ordination of [the beneficiary] by [redacted], which is a sister Orthodox Church. With this recognition, he is authorized to perform all of the Sacraments and other ecclesiastical functions of the Orthodox Church in the parish churches and missions under the protection of this Archdiocese.

A translated certificate indicates that the beneficiary "has been ordained as a priest within the [redacted] on August 1, 1991," and that [redacted] and [redacted] a and America are directly subordinated canonically to the

In a request for evidence (RFE) dated January 16, 2008, the director requested "an annual history of your local religious organization from [the] year 2000." The petitioner, in response, submitted a "Synoptic History" of unspecified authorship. The document indicated that an ordained Greek

Orthodox priest formed the [redacted] after splitting away from the [redacted]

Excerpts from [redacted] of the Autonomous Greek Orthodox Church essentially coexists with the [redacted] with the two overlapping archdioceses each recognized under the overall jurisdiction of the [redacted]

The USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

> *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

On May 15, 2008, as part of the compliance review for the present petition, a USCIS officer contacted [redacted], secretary of the [redacted]. According to [redacted] and the minutes of a March 8, 2007 Archdiocesan Council meeting, "certain canonical and moral problems forced the resignation of [the beneficiary] from the Holy Trinity, Philadelphia parish. Upon motion made and seconded, it was voted to remove [the beneficiary] from the ranks of clergy for our Archdiocese."

On April 6, 2009, the director advised the petitioner of USCIS's intent to deny the petition because the above information appears to indicate that the petitioner's religious denomination no longer recognizes the beneficiary as an authorized member of the clergy. In response, counsel stated:

> Please note that when [the beneficiary] left his position at [redacted], he remained a priest. As stated in his personal statement, he resigned because of differences between the congregation and himself. In fact, the actual letter reporting on [the beneficiary's] departure from his previous church indicates only that he would not be permitted to perform services in THAT church. In both that letter and in the Archdiocese Council Meeting of March 8, 2007 there is no indication that [the beneficiary] is permanently removed as a priest. There is no recitation, as would be necessary, of any formal canonical proceeding under Church law to remove [the

> beneficiary]. In fact, the action by the diocese appears to be limited only to that diocese.
>
> . . . [redacted] is aware of the entire proceeding in [the beneficiary's] previous diocese but as a co-equal with [redacted], he has the power to accept [the beneficiary] even if his previous diocese has rejected him.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We must, therefore, consider the evidence that the petitioner has submitted in support of the above claims.

The petitioner submitted a new letter from [redacted] who stated that the beneficiary "continues to be recognized as a priest" in the eyes of the petitioning organization. The petitioner submitted a translated letter from [redacted] of Suceava and Radauti, who stated that the beneficiary served "as parochial vicar in Todiresti Parish until 1st of June 1999. . . . During this period he was not presented to the churchly disciplinary court, he did not suffer canonic punishments and was not defrocked." The "period" to which the letter refers ended in 1999, and the archbishop, writing from Romania, claimed no jurisdiction over the United States. The letter therefore does not address the director's concerns.

The petitioner submitted a three-page statement from the beneficiary, offering his rather vague explanation for his departure from [redacted]. Detailed discussion of this statement would serve little purpose here, because the question of the beneficiary's ongoing status as a priest rests on the judgment of the denomination that ordained him rather than that of the beneficiary himself.

A translated July 26, 2006 letter from [redacted] of the Romanian Orthodox Archdiocese in America and Canada to the Philadelphia church reads, in part:

> Following [the beneficiary's] petition (request) to withdraw from his position as parish priest [redacted] we inform you of our decision to approve this request.
>
> Beginning with today's date, [the beneficiary] is not a parish priest anymore and he is not allowed to perform service in this church, unless he receives our special approval.

Counsel interpreted the above letter to mean only that the beneficiary requires "special approval" to serve as a priest at [redacted], and has no effect on his ability to serve elsewhere. The letter, however, does not merely say that the beneficiary is no longer [redacted] parish priest. It states that he "is not a parish priest anymore and he is not allowed to perform service in this church." Counsel contends that "this church" is Holy Trinity, but the author of the letter is not an official of Holy Trinity, referring to his own parish. Rather, the author is the archbishop, writing

from Chicago. The phrase "this church," therefore, could just as well refer [redacted] which would be consistent with the broad statement that the beneficiary "is not a parish priest anymore." Further complicating matters, the original letter is in Romanian, and the English translation lacks the certification required by the regulation at 8 C.F.R. § 103.2(b)(3). Therefore, we cannot be certain of the accuracy of the translation. We note that the Romanian-language original uses the phrase *în biserică* (literally, "in the church") rather than *în această biserică* (literally "in this church").

The director denied the petition on July 16, 2009, in part because the petitioner had failed to show that [redacted] had reinstated the beneficiary as a priest.

On appeal, counsel condemns the director's "use of *ex parte* communication with individuals from the beneficiary's previous diocese." The director obtained the relevant information during the compliance review process. The regulation at 8 C.F.R. § 204.5(m)(12) permits USCIS to contact "the organization headquarters" to verify the beneficiary's claimed standing as an ordained Romanian Orthodox priest.

Counsel contends: "an archbishop . . . has indicated his support and recognition of [the beneficiary's] qualifications to serve as a priest. Again, there appears to be no information that [the beneficiary] is ineligible to be recognized by a separate Orthodox diocese even after departure from his former diocese." The petitioner resubmits copies of previously submitted documents regarding the overlapping Eastern Orthodox archdioceses in North America.

We agree with counsel that [redacted] has authority only over his own archdiocese, specifically th[redacted]. The petitioner belongs to a geographically identical, but ecclesiastically separate archdiocese, the [redacted] There is no evidence that the decrees of the archbishop of one archdiocese are binding on other archbishops in other archdioceses, and there is no evidence of action against the beneficiary (such as excommunication or defrocking) at the denominational level by officials of the Eastern Orthodox denomination.

We note that the director's findings rest on the minutes of a March 8, 2007 Archdiocesan Council meeting. The record, however, does not contain the minutes themselves, only a brief fragment quoted by the reviewing USCIS officer. Therefore, we can draw no broad conclusions from that document because we have not seen it in its entirety.

Not all of counsel's claims and arguments are particularly persuasive. Nevertheless, we agree with counsel's basic argument that the petitioner's archbishop has the authority to recognize the beneficiary's ordination, and is not required to follow disciplinary rulings by another archdiocese. On balance, the record does not support the director's finding that the beneficiary is not authorized to perform the functions of clergy, and we will withdraw that finding.

The director cited a second basis for denial of the petition, independent of the first basis. 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 [Internal Revenue Service] 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.
>
> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

On Form I-360, asked whether the beneficiary had ever worked in the United States without authorization, the petitioner answered "No." [redacted] signed the petition form, acknowledging under penalty of perjury that the information in the petition was true and correct. Counsel prepared the form and signed it, certifying that "it is based on all information of which I have knowledge."

The record shows that the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on November 9, 1998. The USCIS regulation at 8 C.F.R. § 214.1(e) prohibits B-2 nonimmigrants from working in the United States. The beneficiary's B-2 status expired on May 8, 1999, leaving him with no lawful status or employment authorization after that date. USCIS records contain no evidence that any United States employer ever filed a nonimmigrant petition on the beneficiary's behalf.

The petitioner submitted copies of processed checks, showing that the petitioner paid the beneficiary various amounts in mid-2007 for "personal supplies," "mission supplies" and other expenses. This fragmentary evidence accounts only for a few months of employment during the two-year qualifying period.

In the January 16, 2008 RFE, the director requested further evidence and information regarding the beneficiary's work history. In response, counsel stated:

> [The beneficiary's] work history from November 2005 through July 26, 2006 was as the [redacted]. After separation from [redacted] parish in essentially the same duties he now serves through the [petitioner]. His bank statements show that he supported himself through odd jobs and the support of his brother . . . with whom he lived. In March 2007, the [petitioner] made a formal commitment for the [beneficiary's] current missionary work.

(Evidentiary citations omitted.) The petitioner submitted documentation showing that the church in Philadelphia had filed a Form I-360 petition on the beneficiary's behalf on January 4, 2006, and that USCIS approved that petition on January 30, 2006. USCIS records show that, based on that approved petition, the beneficiary filed a Form I-485 adjustment application on April 13, 2006. Around the same time, the beneficiary filed a Form I-765 application for employment authorization document. USCIS approved that application, granting him one year of employment authorization beginning May 8, 2006, contingent on the outcome of his adjustment application.

On October 25, 2006, USCIS revoked the approval of the Philadelphia church's Form I-360 petition, denied the beneficiary's Form I-485 adjustment application, and automatically revoked the associated employment authorization. Under the USCIS regulation at 8 C.F.R. § 274a.12(c)(9), the beneficiary was eligible for employment authorization only while his adjustment application was pending. The denial of that application terminated the beneficiary's work authorization. The record, therefore, indicates that the beneficiary held employment authorization for only some of the two-year qualifying period.

The petitioner submitted copies of two letters from [redacted], parish council president of the Philadelphia church. In the first letter, dated March 24, 2006, [redacted] stated that the beneficiary had worked full-time for that church since April 1999. In the second letter, dated August 7, 2006, [redacted] stated that the beneficiary ceased working for the Philadelphia church on July 26, 2006 (this being the departure already discussed earlier in this decision).

An uncertified copy of the beneficiary's 2006 federal income tax return indicated that the beneficiary earned $6,600 as a priest. The petitioner did not submit IRS documentation to support this figure.

In denying the petition, the director noted that the beneficiary lacked lawful status and employment authorization for much of the two-year qualifying period. On appeal, counsel states: "The second

ground of denial borders on the legally frivolous. . . . The qualifying experience needed for an I-360 petition does not carry with it the additional requirement that the work [took place] during an authorized period of employment."

The director, in the denial notice, had quoted 8 C.F.R. § 204.5(m)(4), which requires "lawful immigration status," and 8 C.F.R. § 204.5(m)(11), which requires authorized employment. Counsel, on appeal, does not acknowledge or address those regulatory provisions. Counsel admits that the beneficiary lacked lawful status and employment authorization during the statutory period, but denies that this has any effect on the beneficiary's eligibility for the classification sought. Because counsel does not contest the factual basis for this ground of denial, and because counsel is demonstrably wrong about the existence of the regulations in question, we agree with the director's finding in this regard.

We note that, if the petitioner was aware of the beneficiary's unlawful employment at the time of filing, then the petitioner knowingly made a false statement on Form I-360. If counsel was also aware of the beneficiary's unlawful employment at the time of filing, then counsel likewise made a false statement by indicating otherwise on the petition form. Section 204(b) of the Act, 8 U.S.C. § 1154(b), allows the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988).

Beyond the director's decision, the record reveals a number of deficiencies in the petitioner's evidence. 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)(11), which the director quoted in full in the denial notice, requires the petitioner to submit IRS documentation of past compensation. The petitioner has not submitted this documentation or accounted for its absence.

Also, an alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). The Ninth Circuit Court of Appeals, whose jurisdiction includes the California Service Center, has upheld the AAO's interpretation of the two-year experience requirement. *See Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007). In this proceeding, counsel has acknowledged that the beneficiary "supported himself through odd jobs and the support of his brother." This is consistent with findings from the USCIS compliance review, which indicated that the beneficiary worked for his brother's roofing company for a time in 2007.

The regulation at 8 C.F.R. § 204.5(m)(7) requires the intending employer to submit a detailed employer attestation. The record lacks this required document.

Finally, the regulation at 8 C.F.R. § 204.5(m)(10) reads:

> *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.

The petitioner submitted copies of bank statements showing an account balance that rarely exceeds $3,000. [redacted] stated that the beneficiary "receives $600 or more approximately every two weeks as his needs arise," and that the beneficiary travels to several different parishes, each of which contributes toward the beneficiary's support. The petitioner submitted nothing from these parishes to demonstrate that support. The sparse documentation the petitioner has provided appears to be insufficient to meet the regulatory requirements cited above.

We acknowledge that the director did not cite the above shortcomings in the denial notice or earlier. Any such notice, however, would not have changed the outcome of the proceeding, given the uncontested denial arising from the beneficiary's lack of lawful status and work authorization.

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.