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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 seeks classification 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 pastor of music and worship [redacted] The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, counsel contends that the alien is eligible for the classification sought.

Part 1 of the Form I-360 petition identifies [redacted] as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any official of the church, but by the alien beneficiary himself. Thus, the alien, and not the church, has taken responsibility for the content of the petition. This will not affect the adjudication of the appeal, because the record shows that the attorney who filed the appeal represents the self-petitioning alien beneficiary, giving the attorney proper standing to file the appeal.

We note that the director served the denial notice to the church, not to the self-petitioning alien. Nevertheless, the petitioner's attorney of record has filed a timely appeal, the contents of which demonstrate counsel's awareness and understanding of the grounds for denial. Therefore, the director's error in serving the notice did not prejudice the petitioner's ability to file a proper 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 U.S. Citizenship and Immigration Services (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.
>
> 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 filed the Form I-360 petition on June 15, 2009. On that form, the petitioner stated that he last entered the United States on February 7, 2009; that his current nonimmigrant status was that of a "Visitor," and that his nonimmigrant status would expire on August 6, 2009. The record shows that the

petitioner entered as a B-2 nonimmigrant for pleasure. Under the USCIS regulation at 8 C.F.R. § 214.1(e), a B-2 nonimmigrant may not accept employment in the United States.

The petitioner submitted a letter from [redacted] stating that the petitioner "worked in the capacity of a music minister at the above church for the period February 2001 to October 2005." This claimed employment ended nearly four years before the petition's June 2009 filing date, and therefore cannot count as qualifying employment in this proceeding.

The record shows that the petitioner had previously entered the United States on December 14, 2006 and on September 8, 2007. It is not clear how long the petitioner remained in the United States during those earlier visits.

The director denied the petition on August 20, 2009, stating that the petitioner had not submitted any evidence to show continuous, lawful employment in the United States or abroad during the June 2007-June 2009 qualifying period.

On appeal, counsel states:

> [The petitioner] did work as a religious worker abroad in Kingston, Jamaica and St. Mary, Jamaica for two year[s] immediately preceding the filing of the I360 Petition. Proof of said work will be sent as a supplement to this file. [The petitioner] has not began [sic] work in the United States, and therefore . . . has not worked in the United States. . . . [The petitioner] came on a Visitor Visa and did not overstay his visa, but was offered a job, which prompted the filing of the I360 petition. A Supplement to this case will follow this form.

To date, a year and a half after the filing of the appeal, the record contains no supplemental submission, and we consider the record to be complete as it now stands.

The petitioner has not submitted any evidence of his claimed employment at unnamed churches in Jamaica during the qualifying period. Furthermore, the record contradicts, on its face, counsel's claim that the petitioner worked in Jamaica continuously throughout the qualifying period. The petitioner entered the United States more than four months before the filing date, and never left before he filed the petition. Therefore, the petitioner cannot have been performing qualifying religious work in Jamaica between February 7 and June 15, 2009.

The regulation at 8 C.F.R. § 204.5(m)(4) allows for a break in the continuity of qualifying employment. That break, however, must meet certain specified requirements. 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.

The petitioner has not submitted evidence to meet the above requirements.

Furthermore, the present petition is not the first that the petitioner has filed on his own behalf. On May 2, 2007, he filed a Form I-360 petition identifying himself as [redacted] (USCIS denied that petition, and there is no record of an appeal.) The petitioner's signature appears on a letter dated November 10, 2007, continuing to refer to the petitioner as the pastor of that church. Therefore, according to correspondence from the petitioner himself, the petitioner was [redacted] – not Jamaica – in November 2007, which fell during the two-year qualifying period. (The record is devoid of evidence that USCIS had authorized the petitioner to work at the Nevada church.)

Because the record repeatedly contradicts counsel's claim that the petitioner worked continuously in Jamaica from June 2007 to June 2009, and because counsel appears never to have produced the evidence of that claimed employment, we give no weight at all to counsel's claims. The unsupported assertions of counsel do not constitute evidence. *See 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 agree with the director's findings regarding the beneficiary's past employment (or lack of it), and will dismiss the appeal on that basis. We note, however, that review of the record shows numerous additional 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 regulations at 8 C.F.R. §§ 204.5(m)(1) and (4)(iii) require the alien beneficiary to have belonged to his intending employer's religious denomination continuously throughout the two-year period immediately preceding the filing of the petition. In this instance, the intending employer belongs to [redacted] Therefore, the petitioner must show that he belonged to [redacted] denomination throughout the 2007-2009 qualifying period.

We note the petitioner's submission of a letter from [redacted], attesting to his work there from 2001 to 2005. That period, however, fell entirely outside the two-year qualifying period.

As we have noted elsewhere in this decision, the petitioner previously filed a Form I-360 petition identifying himself as [redacted]. In a November 10, 2007 letter, the petitioner – still referring to himself as the pastor of that church – stated: "[redacted] is establish[ed] under the covering of [redacted]." He did not claim or demonstrate that [redacted] has ever belonged to [redacted].

Therefore, during the two-year qualifying period, the petitioner declared himself to be the pastor of a church with no demonstrated connection [redacted]. Therefore, we cannot find that the petitioner has shown himself to be a member of [redacted] denomination continuously from June 2007 to June 2009. The available evidence suggests otherwise.

The USCIS regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to submit a detailed employer attestation, signed by an authorized official of the organization that seeks to employ the alien. The record does not contain this required attestation.

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 [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.

[redacted] pastor of the church in Gulfport, stated: "The church will be totally responsible for [the petitioner's] accommodation and financial support," but he provided no details about the petitioner's intended compensation. This vague declaration of intent to support the petitioner cannot satisfy the regulatory requirement for evidence relating to compensation.

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.