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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

DATE: MAY 03 2011

Office: CALIFORNIA SERVICE CENTER

FILE: [redacted]

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 and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a missionary organization. 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 religious instructor. 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.

On appeal, counsel states that beneficiary does not have any Internal Revenue Service (IRS) documentation of her prior employment because she did not receive a salary. Counsel submits a brief and copies of previously submitted 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 May 22, 2006. Accordingly, the petitioner must establish that the beneficiary was 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 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.

In an undated letter submitted in support of the petition, the petitioner, through [redacted], stated that the beneficiary had worked as a bible instructor and lifestyle educator for [redacted] from March 2002 to March 2004 and for the petitioning organization since 2005. In response to an August 3, 2006 request for evidence (RFE), the petitioner submitted a copy of the beneficiary's résumé in which she stated that she worked for [redacted] and for the petitioning organization during the periods indicated and a copy of her Form I-94 Departure Record, indicating that she entered the United States on March 4, 2002 in an R-1 nonimmigrant religious worker status which was valid until March 3, 2005. The petitioner also submitted a copy of a May 19, 2005 Form I-797 approving an extension to the beneficiary's status to March 3, 2007. In a July 30, 2001 letter, [redacted] stated that the beneficiary had agreed to serve with the organization as a "missionary volunteer worker trainee." The petitioner submitted no other documentation to establish the beneficiary's qualifying work experience.

In response to an RFE dated February 20, 2009, the petitioner attested in a March 26, 2009 letter signed by Mr. [redacted], that the beneficiary had "been serving this ministry since May 2004 in the capacity of a Bible Instructor." The petitioner provided a copy of the job description for the proffered position which stated that bible instructors "are not on a salary, nor do they receive remuneration other than the receipt of room and board, and a small stipend." The petitioner submitted copies of documents that counsel stated are copies of checks showing payments to the beneficiary. The documents reflect dates in October, November and December 2008 and January and March 2009. There is nothing in the record to establish the purpose of these alleged payments. Further, the documents are dated after the filing date of the petition; therefore, they are not relevant in establishing the beneficiary's qualifying work experience from May 2004 to May 2006.

The director denied the petition, finding that the petitioner had failed to provide documentation to verify that the beneficiary was employed in the United States during the qualifying two-year period. On appeal, counsel states that the beneficiary did not receive a salary "in the traditional sense of that term" and noted that the regulation requires the petitioner to submit IRS documentation of non-salaried compensation "if available." Counsel further states:

> The regulation contemplated that there could be situations where IRS documentations are unavailable for a non-salaried beneficiary. There are [sic] no

> IRS documentation in this case; however, contemporaneous records show that the petitioner did not contemplate to pay "salary." . . . Subsequent record show that beneficiary continued to work for petitioner and continued to get compensation as contemplated in the R-1 petition this petitioner filed . . . [T]he initial appointment letter . . . specifies her duties including the proposed non-salary compensation.

The petitioner provided a copy of the March 10, 2005 letter that it submitted with the Form I-129, Petition for a Nonimmigrant Worker, wherein it stated that, as compensation for her work as a nonimmigrant religious worker, the beneficiary would "receive full maintenance and care (Room and Board), as well as any necessary allowance needed to meet her living expenses." In an October 7, 2009 letter, the [redacted], founder of [redacted], also stated that volunteers with that organization receive no "remuneration other than the receipt of room and board, and [a] small stipend." Nonetheless, the petitioner submitted no documentation of the non-salaried compensation received by the beneficiary from either organization. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). While the regulation provides some relief for the petitioner if IRS documentation is unavailable, it does not release the petitioner from its obligation of submitting other evidence of non-salaried compensation that it may have provided to the beneficiary.

The petitioner has submitted insufficient documentation to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

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.