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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 11 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, Vermont Service Center (VSC), 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, California Service Center (CSC), for a new decision based on revised regulations. The CSC director determined that the petitioner had failed to submit required evidence, and therefore the CSC director again denied the petition and certified the decision to the AAO. The AAO will affirm the CSC director's decision. The AAO will also enter a separate finding of willful misrepresentation of a material fact.

The petitioner is a Christian church of the Assemblies of God (AG) denomination. 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 the head pastor of the Assembleia de Deus of Revere, Massachusetts. The CSC 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.

In response to the certified denial, the petitioner submits a brief from counsel and copies of documents from earlier proceedings.

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 petitioner filed the Form I-360 petition on January 26, 2006. On that form, the petitioner acknowledged that the beneficiary had entered the United States on February 9, 1999, and that the beneficiary had overstayed past the August 8, 1999 expiration of his B-2 nonimmigrant visitor status.

At the time of filing, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(1) required that an alien seeking classification as a special immigrant religious worker must have been performing qualifying religious work continuously for at least the two-year period immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(A) required the petitioner to submit a letter from an authorized official of the religious organization to establish that the beneficiary had the required two years of experience.

In a letter dated October 17, 2005, [redacted], pastor of the petitioning church and presbyter of [redacted] district, stated:

> [The beneficiary] has been an ordained minister in the American church since 1999, his credentials being transferred from Brazil. His current church leadership role as [redacted] began in 2001. . . .
>
> He is fully given to the work of the Revere congregation and has no other source of income or support. His current salary from the church is $24,000 in annual remuneration.

On April 4, 2006, the VSC director requested evidence of the beneficiary's qualifying experience. In response, the petitioner submitted a June 27, 2006 letter from [redacted], who stated:

> This letter is written as confirmation of [the beneficiary's] relationship to [the petitioner] as his supervising church in his continuing efforts as [redacted]
>
> [The beneficiary] has been and will continue to serve as the lead pastor of that congregation which is an extension of the ministry of [the petitioner] [redacted]
>
> . . . This is a full time position with remuneration of $24,000 with no other benefits apart from salary.

The petitioner also submitted a letter dated June 8, 2006, from [redacted] World Revival's printed letterhead refers to churches in 15 states and 10 other countries. The clear implication is that World Revival is an international organization in its own right.

[redacted] stated: "our ministry employed [the beneficiary] during the time of **February 1999 and March 2006**. . . . [H]is annual salary was **$26,000**" (emphasis in original). This information

conflicts with the petitioner's earlier claim that the beneficiary has worked exclusively at the church in Revere, under the supervision of the petitioner in Lynn, earning $24,000 per year since 2001. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The AAO notes the petitioner has submitted evidence that the petitioning [redacted] is formally affiliated with [redacted] denomination. The record contains no such evidence relating to [redacted]. The AAO also notes that [redacted] church filed an earlier Form I-360 petition on the beneficiary's behalf. The attorney who prepared that petition, [redacted] was subsequently disbarred and imprisoned for offenses related to immigration fraud, including making false statements in violation of 18 U.S.C. § 1001.

The VSC director denied the petition on November 6, 2008, based on grounds unrelated to the beneficiary's claimed prior employment. The petitioner appealed that decision. Around the same time, 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." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

The revised 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 revised USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that an alien's qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The AAO remanded the petition to the CSC director on May 19, 2010, with instructions to adjudicate the petition under the new regulations. The CSC director again denied the petition on September 22, 2010, stating that the beneficiary lacked lawful immigration status and work authorization during the two-year qualifying period.

In response to the certified decision, counsel provides a timeline of prior immigration proceedings regarding the beneficiary:

> On August 31, 1999, a Special Immigrant Petition (I-360) was filed on behalf of the beneficiary, and subsequently approved on October 18, 1999. . . .
>
> USCIS revoked the previously approved I-360 on October 3, 2003. . . .

> The revoked I-360 was immediately appealed and remained in constant adjudication until the Beneficiary was placed in removal proceedings in 2006. Prior to that time, the Beneficiary was always in lawful immigration status. When the Petitioner filed the first I-360 in, [sic] USCIS, incorrectly, did not allow concurrent filing of the adjustment of status [application] by the Beneficiary as they do today. This technical violation, which was subsequently changed, was the direct and proximate cause of an improper and unlawful regulation and therefore should not be used. If USCIS had not improperly and unlawfully applied the regulations, then the Beneficiary would have been able to file for adjustment of status and receive work authorization. This work authorization would have remained valid up until the Beneficiary was placed in removal proceeedings in January of 2006, the same time the second I-360 was filed.
>
> . . . [T]he Beneficiary was never out of status prior to the filing of the second I-360.

Counsel appears to refer, above, to *Ruiz-Diaz v. United States*, No. C07-1881RSL (W.D. Wash. June 11, 2009), a federal court decision which ordered USCIS to accept concurrent filing of Form I-485 adjustment applications with Form I-360 special immigrant religious worker petitions. USCIS's predecessor, the Immigration and Naturalization Service (INS), however, did not accept concurrent filing of Form I-485 for any petition type in 1999. The INS first created concurrent filing in a rule published in 67 Fed. Reg. 49561 (July 31, 2002). Also, the Ninth Circuit Court of Appeals overturned the *Ruiz-Diaz* decision several weeks before the CSC director issued the certified denial notice. *Ruiz-Diaz v. USA*, No. 09-35734 (9th Cir. Aug. 20, 2010). USCIS ceased to accept concurrent filings of Forms I-360 and I-485 on November 8, 2010.

Although the beneficiary did not file Form I-485 concurrently with the 1999 petition, and could not have done so because concurrent filing did not yet exist for any immigrant classification, he did file Form I-485 on September 5, 2000, after the approval of the 1999 petition. Counsel is demonstrably aware of this filing, because counsel has, in another context, submitted a copy of the filing receipt. At the same time, the beneficiary filed Form I-765 to apply for employment authorization. What was then the INS approved the Form I-765 application, granting the beneficiary one year of employment authorization while his Form I-485 was pending. Subsequently, on October 1, 2003, USCIS denied the Form I-485, at the same time it revoked the approval of the first petition. After the revocation of the approved Form I-360 and the denial of the Form I-485, the beneficiary's adjustment application no longer entitled the beneficiary to employment authorization. *See* 8 C.F.R. § 274a.12(c)(9).

Regardless of when and how the beneficiary filed the Form I-485, the beneficiary derived employment authorization from the adjustment application only while it was pending. That employment authorization ended in October 2003 with the denial of the adjustment application. Nothing in the above procedural history suggests that the outcome of that application would have been any different if only the beneficiary had filed it concurrently with the petition in 1999, instead of in 2000. Without a pending adjustment application, concurrently filed or otherwise, the beneficiary had no employment authorization in 2004-2006.

Counsel asserts that the revocation of the approval of the 1999 Form I-360 petition "was immediately appealed," but cites no statute, regulation or case law that grants an alien lawful status or employment authorization based on a pending appeal. The TSC director found the appeal to be untimely, treated it as a motion to reopen under 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*), and affirmed the revocation in August 2005. USCIS records reflect no further action on the 1999 petition, and the AAO therefore considers that matter closed.

At no time did the beneficiary derive lawful status from the approval of the 1999 petition. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho* at 589.

When the present petitioner filed its Form I-360 in January 2006, the petitioner did not claim that the beneficiary held any lawful status. The petitioner acknowledged, on Form I-360, that the beneficiary was an "Overstay" whose lawful status had expired on "08/08/1999." Counsel prepared that Form I-360. Therefore, counsel is aware that the petitioner regarded the beneficiary's claimed employment as unauthorized at the time.

Based on the above evidence and arguments, the AAO agrees with the CSC director's finding that the beneficiary lacked lawful status and employment authorization throughout the two-year qualifying period.

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 2008 revisions to the regulations introduced several new evidentiary requirements. The regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to submit a detailed employer attestation; the regulation at 8 C.F.R. § 204.5(m)(10) calls for evidence relating to the beneficiary's intended compensation; and the regulation at 8 C.F.R. § 204.5(m)(11) requires the petitioner to submit Internal Revenue Service documentation of past compensation paid to the beneficiary. The record does not contain these required materials.

With respect to the beneficiary's intended compensation, the AAO acknowledges the petitioner's prior submission of financial statements from [redacted]
The petitioner, however, did not establish that the district was directly responsible for compensating the ministers within that district. The district's complete expenses for calendar year 2006 added up to $1,991,115, which appears to be too small a sum to account for the salaries of every [redacted] even if the district had no other expenses.

The AAO will affirm the certified denial 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.

In addition to the evidentiary deficiencies listed above, there is also a major issue involving the petitioner's credibility. On March 3, 2011, the AAO advised the petitioner that two churches (the petitioner and [redacted] made overlapping and contradictory claims regarding the beneficiary's employment activities. The petitioner had claimed that the beneficiary began working exclusively for the petitioner in 2001, earning $24,000 per year with "no other source of income or support," whereas [redacted] claimed that [redacted] employed the beneficiary from 1999 to 2006, with an annual salary of $26,000. The AAO, in its March 2011 notice, stated:

> Because these letters disagree on nearly every detail, it is clear that you and [redacted] were not both describing the same job.
>
> If [redacted] had "no other source of income" other than the Revere church as of October 2005, when you made that claim, then he was not working for [redacted] church at that time. Your own claims, and the claims of [redacted] contradict one another and cannot possibly both be true. Nevertheless, you submitted letters containing these conflicting claims. We conclude, therefore, that at least one of these letters contains false information, submitted in furtherance of your petition. Because the beneficiary's employment from 2004 to 2006 is material to the outcome of the petition, submission of false information regarding that employment amounts to misrepresentation of a material fact.
>
> Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.
>
> We note that [redacted] church had filed an earlier Form I-360 petition on the beneficiary's behalf. The attorney who prepared that petition, [redacted], was subsequently disbarred and imprisoned for offenses related to immigration fraud, including making false statements in violation of 18 U.S.C. § 1001.

In response, [redacted], states:

> I will not be attempting to explain or reconcile the differences at this time. I realize that there does [*sic*] appear to be some inconsistencies in the petition and recognize your concerns on this matter, but I would like to ask that these apparent inconsistencies be

overlooked for now because at the moment I do not have the time to fix these inconsistencies. I can fix them, but need more time to do so.

[redacted] does not explain how he seeks to reconcile the two churches' contradictory claims. He merely claims that he will eventually be able to do so, given an unspecified period of time to prepare a response. The AAO gave the petitioner an opportunity to provide an explanation, and the petitioner has responded merely by claiming that an unspecified explanation exists. Because the petitioner has not provided any explanation for the contradictory claims discussed above, the AAO will enter a finding of willful misrepresentation of a material fact.

First, the petitioner submitted the conflicting letters from its own officials and from [redacted] to USCIS, in support of a visa petition. Because these letters contradict one another, at least one of the letters logically must contain information that is patently false. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). Here, the submission of letters containing contradictory claims in support of the Form I-360 petition constitutes a false representation to a government official.

Second, the AAO finds that the petitioner willfully made the misrepresentation. [redacted] signed the Form I-360 petition, certifying under penalty of perjury that the petition and the submitted evidence are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). More specifically, the signature portion of the Form I-360, at part 9, requires the petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct." On the basis of this affirmation, made under penalty of perjury, the AAO finds that the petitioner willfully and knowingly made the misrepresentation.

Third, the evidence is material to the beneficiary's eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cut off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Matter of Ng*, 17 I&N Dec. at 537.

The misrepresentation cut off a potential line of inquiry regarding the beneficiary's prior employment. That employment is directly material to the beneficiary's eligibility under the statutory provisions at section 101(a)(27)(C)(iii) of the Act, and the regulation at 8 C.F.R. § 204.5(m)(4). The AAO concludes that the petitioner's misrepresentations were material to the beneficiary's eligibility.

By filing the instant petition and submitting evidence purporting to document the beneficiary's prior employment at two different churches, the petitioner has sought to procure for the beneficiary a benefit provided under the Act using documents that are not what they were originally purported to

be. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, the finding that the petitioner misrepresented the nature of these documents, the AAO finds that the petitioner has willfully misrepresented a material fact.

The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546. The AAO will enter a finding of willful misrepresentation of a material fact.

Additionally, the evidence is not credible and will not be given any weight in this proceeding. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

ORDER: The CSC director's decision of September 22, 2010 is affirmed. The petition is denied.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.