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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

[redacted]

DATE: APR 2 3 2012

OFFICE: CALIFORNIA SERVICE CENTER

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, ("the director") denied the employment-based immigrant visa petition on January 12, 2010. The petitioner timely filed an appeal to the denied petition. The matter is now before the Administrative Appeals Office ("AAO") on appeal. The AAO will dismiss the appeal.

The petitioner is a Sikh non-profit religious 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 *kirtanker*, or a devotional hymns singer. On August 28, 2009, the petitioner filed a Form I-360 petition. On October 27, 2009, the director sent a Request for Evidence to the petitioner, who timely responded. On January 12, 2010, the director denied the petition. The director found that the petitioner failed to establish that the beneficiary had been employed full time as a religious worker for the two year period immediately preceding the filing of the petition. Additionally, the director noted a separate issue regarding the beneficiary's membership in the petitioner's denomination for the preceding two years.

On appeal, the petitioner submits further documentation.

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 here is whether the beneficiary possesses two years of continuous lawful work experience in the country immediately prior to the filing of the Form I-360 petition. The regulation at 8 C.F.R. § 204.5(m)(4) states that:

> (m) *Religious workers.* This paragraph governs classification of an alien as a special immigrant religious worker as defined in section 101(a)(27)(C) of the Act and under section 203(b)(4) of the Act. To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) 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.

Further, 8 C.F.R. § 204.5(m)(11) states that:

> (11) *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 current Form I-360 petition on August 28, 2009. According to the regulation above, the beneficiary must have been continuously working in lawful status for two years prior to the filing of the petition, from August 28, 2007 to August 28, 2009. The petitioner stated in a letter dated December 2, 2009 that the beneficiary had been working for the organization since April 12, 2003. However, the record reflects that the beneficiary has been in this country working for the petitioner since August of 2004, which is what the beneficiary stated in his Form G-325A, found in the record. Regardless, the evidence shows that the beneficiary was in the United States and working for the petitioner during the two year period immediately preceding the filing of the current petition, in lawful R-1 status.

In the denial decision, the director found that the petitioner did not meet its burden of showing that the beneficiary had been working full time for the petitioner for the two year period prior to the filing of the petition. The director stated:

The petitioner specifically alleges that the beneficiary has been working full time and receives an annual salary of $25,000. In addition to that, the beneficiary also receives extra income in the form of offerings from the devotees of the [redacted] temple. However, according to the beneficiary's 2008 W2, the beneficiary had a reported income of $6800. However, there was no 2007 W2 submitted. And according to the beneficiary's 2007 federal tax return Form 1040, which is not the certified copy as requested, the beneficiary's [sic] self-employed with a business income of $10,400. Both of which were substantially below the approximate $25,000 that should have appeared on the W2's for an annual income. There is no evidence or explanation provided with the response to reconcile the discrepancy.

The director also noted its specific request for the number of hours per week worked and to be worked as it related to the beneficiary's breakdown of duties and detailed descriptions of work to be done. The director found that the response by the petitioner was insufficient.

On appeal, a representative of the petitioner's submitted a letter dated March 12, 2010 in which he stated:

> In my previous letter dated December 2, 2009 in support of Birender Singh's special immigrant visa petition, I had confirmed that Mr. [redacted] receives an annual salary of $25,000 that includes free boarding and lodging valued at 15,400. This means that cost of his boarding, lodging and other expenses which comes around $15,400 per annum and are borne by our organization, is included in his salary. In simple means, his annual cash salary was approximately $10,000 per annum ($25,000 minus $15,400) at the time of issuance my previous letter. While denying Birender Singh's petition Immigration service wrongfully concluded that he was supposed to receive annual salary of $25,000.

The AAO is not persuaded by the petitioner's claims on appeal. To show that the beneficiary had the requisite two years of continuous lawful work experience as prescribed by 8 C.F.R. § 204.5(m)(11), the petitioner submitted the beneficiary's 2007 Form 1040 and his 2008 Form 1040 and the beneficiary's 2008 Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement. On appeal, the petitioner further submitted the beneficiary's IRS Form W-2 that the petitioner issued for 2009, and amended copies of the beneficiary's 2007 and 2008 IRS Forms 1040, U.S. Individual Income Tax Return. The AAO notes that the 2008 IRS Form W-2 the petitioner provided on behalf of the beneficiary is in the amount of $6,800, which is still below the petitioner's new stated salary of $10,000 per year, let alone the original salary quoted in the Form I-360 petition and December, 2009 letter.

Regarding the tax information for the year 2007, the AAO finds this information to be inconsistent. The AAO notes that the petitioner did not submit the beneficiary's IRS Form W-2 or Form 1099-MISC, Miscellaneous Income for 2007. All that the petitioner submitted was a 2007 tax return before the director and an amended 2007 tax return on appeal. The beneficiary's initial 2007 tax return shows that he made $10,400 and the amended return shows an income of $27,150. The beneficiary reported this income on schedule C. The lack of an IRS Form W-2 or 1099 is contradictory to all of the statements made by the petitioner stating that it would pay the beneficiary a salary, whether it is $25,000 as the petitioner stated on the Form I-360, or $10,000 as the petitioner now states on appeal. The record does not resolve why the beneficiary reported his earnings for 2007 on schedule C. The record also does not resolve why the petitioner submitted an IRS Form W-2 for 2008 and 2009, and yet did not submit an IRS Form 1099 or an IRS Form W-2 for 2007. *Matter of Ho*, 19 I&N Dec. 582, 591-592, states:

> It is incumbent on 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.

On appeal, the petitioner submitted the beneficiary's amended tax returns for 2007 and 2008. The changes in the federal income tax returns showing an increase in the beneficiary's adjusted gross income based on the increased cash reported on schedule C cast doubt on the credibility of the petitioner's claims. *See Matter of Ho*, 19 I&N at 591 (stating that 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). Further, the amended tax return shows no evidence of submission to the Internal Revenue Service (IRS) or its receipt or acceptance by the IRS. USCIS requires IRS-certified copies of the amended return to establish that the amended return was actually received and processed by the IRS. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Like a delayed birth certificate, the amended tax returns created several years after the fact raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). Because the petitioner has not provided consistent financial information for 2007 and for 2008, the AAO cannot find that the beneficiary worked continuously for the two years immediately preceding the filing of the Form I-360 petition.

The AAO further notes that although the petitioner stated on appeal that $15,400 of the beneficiary's salary would be provided in the form of room and board, the petitioner has provided no verifiable evidence to show that it provided this compensation to the beneficiary for the two years prior to the filing of the petition. The AAO also notes that the compensation for housing made up a significant part of the beneficiary's salary. The regulation at 8 C.F.R. § 204.5(m)(11)(ii) requires that the petitioner must submit IRS documentation of the non-salaried compensation. In a Form I-485 Application to Adjust Status and Form G-325A Biographic Information submitted contemporaneously with the Form I-360 petition, the beneficiary stated that he lived at 95-30 117th Street, Richmond Hill, NY 11418 since August of 2004. The petitioner however has provided no information that it owns this residence and allows the beneficiary to live there without paying rent, or that it subsidizes the beneficiary's rent payments. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Because the petitioner has provided no information that it provided housing compensation to the beneficiary during the two year period, the AAO cannot find that the beneficiary worked continuously for the petitioner for the two years immediately preceding the filing of the petition.

Therefore, the AAO will uphold the director's decision that the petitioner has not shown that the beneficiary has the requisite continuous experience during the two years period immediately prior to the filing of this petition.

The director also noted that beneficiary was not a member of the petitioner's denomination for the two year period immediately preceding the filing of the Form I-360 petition, as required by the regulation at 8 C.F.R. § 204.5(m)(1). However, there is evidence in the record showing that the

beneficiary has been a Sikh for much longer than the two year period required by the regulation. For this reason, the AAO will withdraw this part of the director's decision.

Beyond the director's decision, the AAO also finds that petitioner failed to establish its ability to compensate the beneficiary. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial 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 regulation at 8 C.F.R. § 204.5(m)(10) requires that the petitioner submit verifiable evidence of how the petitioner intends to compensate the alien. In the present case, as discussed above, the petitioner had to show that it can compensate the beneficiary. One of the ways of doing this is by submitting past IRS Forms W-2 as proof that it has been doing this previously, which is indicative of future ability. The petitioner submitted IRS Forms W-2 for 2009 and 2008, but no IRS Form W-2 for 2007. Further, the petitioner submitted no verifiable documents regarding its claim of providing room and board to the beneficiary and no financial records or statements in the form of taxes or audited financial statements from 2007 to 2009 to show that it had the ability to compensate the beneficiary or to establish that it had been and would in the future provide the beneficiary with room and board. For this reason as well, the petition will be denied.

The petition will be denied 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.