

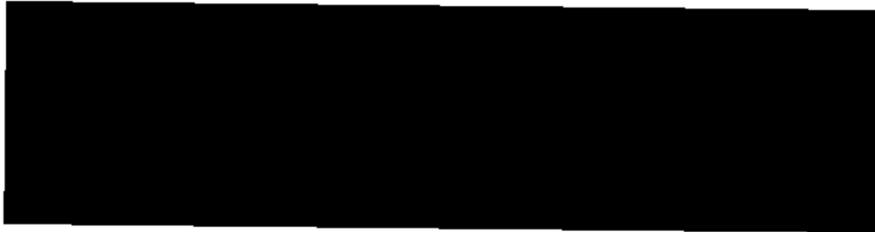
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

Date: **AUG 13 2012** Office: CALIFORNIA SERVICE CENTER

FILE:

IN RE: Petitioner:
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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 a church. 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 an associate pastor/director of international school of ministry. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The director additionally found that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, the petitioner submits a letters from the petitioning church, a copy of a monthly budget from Harvest Tabernacle Inc. Las Vegas, uncertified copies of the beneficiary's tax returns for the years 2008 and 2009, a United States Postal Service Certified Mail Receipt, a letter from accountant [REDACTED], profit and loss statements and balance sheets for 2008 and 2009, and a copy of an "Orientation Packet" for the M:28 School of Ministry.

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 first issue to be discussed is whether the petitioner has established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience during the two years immediately preceding the filing of the petition.

The U.S. Citizenship and Immigration Service (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 petition was filed on June 7, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration status throughout the two-year period immediately preceding that date.

The USCIS 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 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 the petition, the petitioner stated its intent to employ the beneficiary as "Associate Pastor/Director of International School of Ministry" in Sarasota, Florida, and to provide the following compensation: "Food \$125.00 per week, Lodging/Utilities \$175.00 per week. Stipend \$150.00 per week." In a letter accompanying the petition, dated April 15, 2010, the petitioner asserted that it was currently compensating the beneficiary at that rate. The petitioner submitted a

copy of a Form I-797A, Notice of Action, indicating that the beneficiary was approved for R-1 nonimmigrant status authorizing his work for the petitioner with validity dates of September 29, 2008 until May 31, 2011. The petitioner also submitted copies of various certificates held by the beneficiary, including a Certificate of Ordination from the petitioning church, dated June 24, 2009.

The petitioner also submitted an undated document, signed by the beneficiary, showing monthly income and expenditure for "Harvest Tabernacle Inc. Las Vegas, 1200 Redwood St. Apt. 36, Las Vegas NV 89146." The total monthly income listed on the document was \$1,847.00, including "Support from Harvest Tabernacle Sarasota Florida" in the amount of \$647.00, and the monthly expenditure included a "Pastors Honorarium" in the amount of \$1,500.00.

On July 29, 2010, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary's work history during the two-year qualifying period immediately preceding the filing of the petition. The notice specifically instructed the petitioner to submit experience letters providing detailed information about the beneficiary's schedule and the work performed, and to submit evidence of compensation received, including copies of the beneficiary's IRS Forms W-2 for 2008 and 2009.

In a letter responding to the notice, the petitioner stated, in pertinent part:

Work History

March 2008 – December 2009 – The beneficiary, [REDACTED] was a minister for our church location in Las Vegas that has since closed down (**SEE DOCUMENT O**). His compensation, budget, etc... can be found as listed in **DOCUMENT P**. His duties were to Pastor the church as the Lead Pastor. He worked approximately 45 hours per week.

December 2009 – Present – The beneficiary has been working at our main church location in Sarasota, FL. Please see **DOCUMENT K** for a list of current compensation for this position. His duties are the role of Associate Pastor and Director of the M: 28 International School of Ministry. He works approximately 50 hours a week including services.

Tax Documents

1. The beneficiary was not eligible for employment and thus did not receive or file tax documents in 2008 or 2009.

(Emphasis in original). The petitioner submitted a letter dated May 20, 2008, labeled "Document O," authorizing the beneficiary "to conduct business in the name of Harvest Tabernacle Las Vegas" which was described in the letter as a subsidiary of the petitioning church. The petitioner

resubmitted a copy of the monthly budget for the Las Vegas church as "Document P," and resubmitted a copy of its April 15, 2010 letter regarding compensation as "Document K."

The AAO notes that the petitioner's statement that the beneficiary did not file tax documents because he was not eligible for employment in 2008 and 2009 conflicts with the submitted evidence that the beneficiary held R-1 nonimmigrant status from September 29, 2008 to May 31, 2011. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On September 9, 2010, the director denied the petition, in part finding that the petitioner failed to establish that the beneficiary was compensated for his services in 2008 and 2009. The director therefore determined that the petitioner had failed to establish that the beneficiary had the requisite two years of qualifying work experience immediately preceding the filing of the petition.

On appeal, the petitioner again asserts that, from March 2008 to December 2009, the beneficiary served as minister for the petitioner's church in Las Vegas, and from December 2009 to the present, he has served as associate pastor and as director of the petitioner's M:28 International School of Ministry. As "evidence of support by sponsoring church," the petitioner submits uncertified copies of Form 1040 tax returns for the beneficiary for the years 2008 and 2009. The tax returns for both years are dated October 1, 2010 and the forms are accompanied by a United States Postal Service Certified Mail Receipt indicating that they were mailed to the Internal Revenue Service (IRS) on October 1, 2010.

The regulation at 8 C.F.R. § 204.5(m)(11) requires the petitioner to submit evidence of compensation for employment during the two years immediately preceding the filing of the petition or evidence of qualifying self-support during that period. The petitioner asserts that the beneficiary received both salaried and non-salaried compensation during the qualifying period. However, the petitioner has not submitted sufficient evidence to support that assertion. 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)). Although the petitioner submits copies of the beneficiary's tax returns for 2008 and 2009 on appeal, these forms do not indicate the source of the beneficiary's income, nor does the petitioner submit Forms W-2 or 1099 to identify the source of the income. Additionally, the petitioner has not explained why these forms were filed in October 2010, or why it previously asserted that the beneficiary had not filed tax documents for 2008 and 2009 because he "was not eligible for employment." Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho* at 591.

Furthermore, the regulation at 8 C.F.R. § 204.5(m)(4) requires that the beneficiary held lawful immigration status throughout the qualifying period and the regulation at 8 C.F.R. § 204.5(m)(11)

requires that any employment in the United States during that period was authorized. The AAO notes that the petitioner has submitted evidence to show that the beneficiary held R-1 nonimmigrant status from September 29, 2008 until the filing of the petition. However, the petitioner has not submitted evidence regarding the beneficiary's immigration status during the portion of the qualifying period prior to September 29, 2008. Accordingly, the petitioner has not established that the beneficiary's work prior to that date was qualifying employment.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(5) defines a minister as one who is "fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination." The petitioner has asserted that the beneficiary served as a minister for its Las Vegas church from March 2008 to December 2009. However, the evidence indicates that the beneficiary was ordained by the petitioning church on June 24, 2009. It is not clear that the beneficiary was fully authorized according to the petitioner's standards as required by the regulation at 8 C.F.R. § 204.5(m)(9) before that date, and therefore the petitioner has not shown that the beneficiary was employed in a qualifying ministerial position prior to June 24, 2009.

For the reasons discussed above, the AAO agrees with the director's determination that the petitioner failed to establish that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition.

The second issue to be discussed is whether the petitioner has established how it intends to compensate the beneficiary. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

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.

In support of its claim to provide the beneficiary with "Food \$125.00 per week, Lodging/Utilities \$175.00 per week [and a] Stipend \$150.00 per week," the petitioner submitted an undated document listing the monthly income and expenditure of Harvest Tabernacle Inc. Las Vegas.

In the July 29, 2010 Request for Evidence, USCIS instructed the petitioner to submit additional evidence of how it intends to compensate the beneficiary in accordance with the regulation at 8 C.F.R. §204.5(m)(10). The notice also instructed the petitioner to provide copies of the beneficiary's Forms W-2.

In response to the notice, the petitioner asserted that the beneficiary "was not eligible for employment and thus did not receive or file tax documents in 2008 and 2009." The petitioner submitted a letter dated August 19, 2010, in which it asserted that "[a]t this point in time, [the beneficiary] is compensated with housing and food \$1200.00 per month, and salary of \$542.00 per month."

In her decision, the director found that the petitioner failed to submit sufficient evidence to establish its ability to compensate the beneficiary.

On appeal, the petitioner submits uncertified copies of the beneficiary's tax returns for the years 2008 and 2009. The petitioner also submits a letter from an accountant, [REDACTED], which states:

I have been asked to review the system of accounting and internal control for Harvest Tabernacle, 209 North Lime Ave, Sarasota, Florida 34237. I noticed that controls are in effect to protect the assets of the corporation and that the entity has a functioning accounting system that is operating in accordance with generally accepted accounting principals [sic], with the exception that they are produced on a modified-cash basis which does not record depreciation of the assets. They have contracted with [REDACTED] an outside account to monitor their operation on a monthly basis.

Additionally, the petitioner submits copies of profit and loss statements and balance sheets for the petitioning organization for 2008 and 2009.

The regulation at 8 C.F.R. § 204.5(m)(10) states that the petitioner must submit IRS documentation of its ability to compensate the beneficiary, or provide an explanation for its absence "along with comparable, **verifiable** documentation" (emphasis added). The only IRS documentation submitted by the petitioner consists of uncertified copies of the beneficiary's Forms 1040 for 2008 and 2009 which do not identify the source of the beneficiary's income. The Las Vegas church's monthly budget and the petitioning church's financial statements do not constitute verifiable evidence, as they are the petitioner's own representations of its financial position. Although the accountant, [REDACTED] states that he has reviewed the petitioner's "system of accounting and internal control," he does not state that he has audited or reviewed the financial statements submitted on appeal. Therefore, the AAO agrees with the director's determination that the petitioner has not submitted sufficient evidence to establish its ability to compensate the beneficiary.

As an additional matter, the AAO finds that the petitioner has not established that the beneficiary will be employed in a qualifying position. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 USCIS regulation at 8 C.F.R. § 204.5(m)(2) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must:

(2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

On the Form I-360 petition, Part 2. Classification Requested, the petitioner indicated that the beneficiary will be working as a minister. In Part 8, Employer Attestation, the petitioner stated that the beneficiary's title would be "Associate Pastor/Director of International School of Ministry," and described his proposed daily duties as "[p]reaching, teaching, counseling, visiting sick and incarcerated as required." The petitioner identified itself as affiliated with the Pentecostal denomination.

In the July 29, 2010 Request for Evidence, USCIS instructed the petitioner to submit additional information regarding the proffered position as follows:

Provide a **detailed description** of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function.

In a letter responding to the notice, the petitioner stated the following:

Proffered Position

1. The position of Associate Pastor includes the following duties: Pre-marital counseling, family counseling, administration of volunteer ministry directors, oversee ushers, oversee some services including CityLight on Saturday night.

The position requires ministerial training course completion and previous ordination with pastoral experience. This position requires 20-25 hours/week.

2. The position of Director of M: 28 International School of Ministry @ The Harvest includes the following duties: oversee the school, write curriculum, manage teaching staff, and to coordinate class schedules. This position requires ministerial training course completion and previous ordination with pastoral experience. This position requires 20-25 hours/week.

The petitioner submitted copies of various certificates held by the beneficiary including certificates of ordination and certificates of completion of training courses.

The AAO finds that, according to the petitioner's description of the proffered position, it appears the petitioner is attempting to combine two unrelated part-time positions into a single full-time position. Further, the beneficiary cannot be considered to be employed "solely in the vocation of a minister," as required under 8 C.F.R. §§ 204.5(2) and (5) as he will be employed both in a ministerial role as the director of a religious school.

Finally, regarding the beneficiary's role as "Director of International School of Ministry," the petitioner has not established that the duties of this position relate to a traditional religious function or that the duties are not primarily administrative in nature. Additionally, the petitioner failed to submit evidence that the job is recognized as a religious occupation within the Pentecostal denomination. Accordingly, the petitioner has not established that this position meets the definition of "religious occupation" under the 8 C.F.R. §204.5(m)(5).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.