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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: **AUG 2 7 2012** 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 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 ordained pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel.

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 alien 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 January 27, 2010. Therefore, the petitioner must establish that

the beneficiary was continuously performing qualifying religious work in lawful 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.

The petitioner filed the Form I-360 petition on January 27, 2010. In a letter accompanying the petition, the petitioner provided the following summary of the beneficiary's work history:

7/19/2004 – 5/23/2006 [redacted]
[Education Pastor]

5/22/2006 – 2/20/2009 [redacted]

2/20/2009 – 12/2009 [redacted]
[Visiting Pastor] [Nonsalaried Compensation]
[Housing, board and transportation]
Self-Supporting – Wire transfers

12/2009 – present [redacted]
[Housing, board and transportation]
Self-supporting – wire transfers

According to evidence accompanying the petition, the beneficiary held R-1 nonimmigrant status which authorized his employment with [redacted] California from July 19, 2004 to July 16, 2007, and with [redacted] California from May 23, 2006 to February 20, 2009. The record does not indicate that the beneficiary held any lawful immigration status or employment authorization between February 20, 2009 and the date of filing of the petition, January 27, 2010. Accordingly, any work performed during that period would not be considered qualifying experience under 8 C.F.R. §§ 204.5(m)(4) and (11).

The petitioner submitted copies of the beneficiary's Forms W-2 for the years 2004 through 2008. The 2008 Form W-2 indicated that the beneficiary received $26,400.00 from [redacted] in that year. No evidence was submitted at the time of filing regarding salaried or non-salaried compensation received by the beneficiary in 2009.

On January 31, 2011, USCIS issued a Request for Evidence requesting additional documentation 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 from previous and current employers providing detailed information about the work performed by the beneficiary, and to submit evidence of compensation or, if any work was on a volunteer basis, evidence of self-support. The notice additionally instructed the petitioner to submit evidence that the beneficiary held lawful status during any periods of employment in the United States, and to submit copies of the beneficiary's Forms W-2 for 2009.

In response, the petitioner submitted a letter from [redacted], which stated that it had employed the beneficiary as full-time senior pastor from May 2006 to February 20, 2009. The letter further stated: "He was dispatched to [redacted] an alternate work site in January – February 20, 2009 but he was on our payroll and continued his duration of R-1 visa status with our church." In a letter responding to the notice, counsel for the petitioner stated the following:

> The beneficiary received compensation for two months, January and February 2009 from [redacted] and was not issued a W-2 form. ... From February 2009 – January 27, 2010, the beneficiary received non-salaried compensation (room and board) and received funds from Mission organizations solicited from overseas.

The petitioner resubmitted a copy of the beneficiary's 2008 Form W-2 and additionally submitted a copy of a check from [redacted] to the beneficiary for $2,031.89 dated January 29, 2009, as well as a copy of the beneficiary's bank account statement showing a deposit for that amount on March 4, 2009. The petitioner also submitted a document with the heading "About pastoral support activities," which stated that he is "supported by the missionary from [redacted]' of the

[redacted] along with copies of the beneficiary's bank account statements from several months in 2009 and 2010 with various wire transfers and deposits from unidentified sources highlighted by the petitioner.

On May 3, 2011, the director denied the petition, finding that the petitioner failed to establish that the beneficiary was lawfully employed as a religious worker for at least the two years immediately preceding the filing of the petition.

On appeal, the petitioner does not assert that the beneficiary held employment authorization throughout the qualifying period. Rather, counsel for the petitioner argues that the regulations do not require a beneficiary to hold employment authorization to accept non-salaried employment, and that the regulations specifically recognize "special instances where a beneficiary is working and receiving no salary or non-salaried compensation" as counting towards the requisite two years of qualifying experience.

The AAO disagrees with counsel's interpretation of the regulations. Although counsel correctly states that non-salaried employment can be qualifying experience, the regulation at 8 C.F.R. § 204.5(m)(11) specifically requires that qualifying prior experience, "if acquired in the United States, must have been authorized under United States immigration law." The Board of Immigration Appeals has held that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). The petitioner has not established that the beneficiary was authorized to accept any employment under United States immigration law between the expiration of his R-1 nonimmigrant status on February 20, 2009 and the filing of the petition on January 27, 2010.

Furthermore, as noted by the director, the evidence submitted suggests that the beneficiary violated his R-1 nonimmigrant status by engaging in unauthorized employment with the petitioner prior to February 20, 2009.

The regulation at 8 C.F.R. § 214.2(r)(3)(ii)(E) as in effect when the beneficiary was approved as an R-1 nonimmigrant, required an authorized official of the organization to provide the "name and location of the **specific organizational unit** of the religious organization" for which the alien would work (emphasis added). The regulation at 8 C.F.R. § 214.2(r)(6) stated:

> *Change of employers.* A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee ... Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status..."

Further, the regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant may engage only in such employment as has been authorized. Any unlawful employment by a nonimmigrant constitutes a failure to maintain status.

In this instance, the beneficiary's R-1 status only authorized his employment with the named employer, [redacted]. Although that organization asserts that it continued to employ and compensate the beneficiary during his work at the petitioning church during January and February of 2009, the petitioner has also asserted that it compensated the beneficiary for his work as a visiting pastor in the form of "Housing, board and transportation." As noted above, such compensation for work performed constitutes employment for immigration purposes. *See Matter of Hall*, 18 I&N Dec. 205 (BIA 1982). Therefore, by working for the petitioner, the beneficiary engaged in unauthorized employment, thus failing to maintain his R-1 nonimmigrant status.

Additionally, the AAO finds that the petitioner has not submitted sufficient evidence of prior compensation during his employment with the petitioner. The regulation at 8 C.F.R. § 204.5(m)(11) requires compensated employment. The petitioner must submit evidence of prior salaried or non-salaried compensation, or evidence of qualifying self-support. Permissible circumstances for self-support, outlined in the USCIS regulations at 8 C.F.R. § 214.2(r)(11)(ii), involve the beneficiary's participation in an established program for temporary, uncompensated missionary work. The petitioner has not shown or claimed that the beneficiary participated in such a program. The petitioner asserts that it provided the beneficiary with non-salaried compensation in the form of housing, board and transportation, but has submitted no verifiable evidence in support of 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)).

Regardless, the issue of whether or not the beneficiary was compensated has no effect on the beneficiary's lack of lawful immigration status during a portion of the two-year qualifying period.

For the reasons discussed above, the AAO agrees with the director's finding that the petitioner has not established that the beneficiary has the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

As an additional matter, the AAO finds that the petitioner has not established its ability 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.

On the Form I-360 petition, the petitioner indicated that it will provide the beneficiary with housing as well as $4,000 per month in salaried compensation. The petitioner submitted copies of its checking account statements for the period from May 21, 2009 to November 22, 2009. The petitioner also submitted its 2010 budget. However, the budget does not include a sufficient breakdown of expenses to show money set aside for the beneficiary's salary or housing. No documentation was provided regarding the housing to be provided and, although the petitioner asserted that it had other paid employees at the time of filing, no evidence of past compensation for any positions was submitted.

No IRS documentation has been submitted regarding the employer's ability to compensate the beneficiary, nor has an explanation for its absence been provided along with comparable verifiable documentation.

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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.