

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: **DEC 18 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,

Ron Rosenberg
Acting 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 Christian ministry. 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 missionary of local/foreign missions support staff. The director determined that the petitioner had not established how it intends to compensate the beneficiary or that the proffered position qualifies as a religious occupation.

On appeal, the petitioner submits a letter from the petitioning church, a "Current Prayer List" prepared by the beneficiary, a flyer relating to an event held by the petitioner, two letters of recommendation for the beneficiary, and an annual income statement for the petitioning organization for 2011.

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 how it intends to compensate the beneficiary. The United States Citizenship and Immigration Service (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, filed on March 10, 2011, the petitioner indicated that it would provide housing and food as compensation to the beneficiary, and that the beneficiary had been serving the petitioning organization for the last three years.

In a February 8, 2012 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 official copies of the beneficiary's Forms W-2 for the years 2009 and 2010.

In response to the notice, the petitioner stated the following:

There is no financial compensation currently paid to [REDACTED]. The work she performs at the ministry is on a volunteer basis only. However, the ministry provides housing and food for her basic needs as well as donations from the congregation.

The petitioner indicated that "there are no IRS Forms W-2 Wage and Tax Statement for 2009 and 2010 to submit" as the beneficiary "received no payment for volunteer work performed." The petitioner submitted a copy of a utility bill addressed to [REDACTED] at the petitioner's address, as well as a list of members of the petitioning organization.

On May 11, 2012, the director denied the petition, in part finding that the petitioner failed to establish how it intends to compensate the beneficiary. The director noted that there is no wage history, as the petitioner indicated that the beneficiary was working on a volunteer basis. The director also found that the petitioner failed to submit any evidence in support of the petitioner's ability to compensate the beneficiary.

On appeal, the petitioner states:

The petitioner has the ability to compensate the beneficiary, [REDACTED] for her employment in the United States at the time of the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Also, we will

continue to provide room and board until the beneficiary obtains lawful permanent residence. Our plan is to compensate the beneficiary out of ministry revenue funds that our organization.

The petitioner submits a copy of an "Annual Income Statement" for 2011 which lists total revenue of \$113,213.00, total operating expenses of \$83,456.00 and an ending balance of \$29,757.00 for the year.

The regulation at 8 C.F.R. § 204.5(m)(10) does not require monetary compensation, instead allowing for salaried and/or non-salaried compensation. The regulation 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). In this instance, the petitioner indicated that it intends to provide the beneficiary with non-salaried compensation in the form of food and housing, and that IRS documentation of past wages is not available as the beneficiary did not receive wages for past employment. However, the petitioner has not submitted verifiable evidence of its ability to provide the beneficiary with the proffered non-salaried compensation. The "Annual Income Statement" submitted on appeal is an internal document of the petitioning organization and is not verifiable, but rather contains assertions made by the petitioner. The petitioner has not submitted any documentary evidence in support of the assertions in the financial statement. Further, although the petitioner indicated that it has been providing food and housing to the beneficiary for her past work, no evidence of such past non-salaried compensation has been provided. 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)).

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.

The second issue to be discussed is whether the petitioner has established that the position offered to the beneficiary qualifies as a religious occupation.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines “religious occupation” as 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.

On the Form I-360 petition, the petitioner listed the title of the proffered position as “Home & Foreign Mission Support Staff” and described the beneficiary’s proposed daily duties as follows: “Prayer intercessor; prepare literature for distribution in the faith community; feed the hungry; outreach programs; work on home and foreign mission departments.”

In the February 8, 2012 Request for Evidence, USCIS requested additional information regarding the petitioning organization as well as the proffered position. The notice also instructed the petitioner to submit evidence “that the duties primarily relate to a traditional religious function and that the position is recognized as a religious occupation within the denomination.”

In a letter responding to the notice, the petitioner indicated that it is a non-denominational organization. The petitioner also stated the following regarding the proffered position:

Missionary- Local/Foreign Mission Support person is the Traditional Religious Occupational role Ms. Ilboudo currently performs in our ministry.

Monday, Tuesday, Wednesday

Makes home visit to the elderly, and the sick, prayer, reading Holy Bible scriptures, taking food and clothing to the family and comforting them.

Thursday and Friday

Coordinate the free clothing for distribution for needy children and their families locally and for foreign relief. Establish new ministry partnerships to fulfill ministry goals for missionary team. Send thank you letters to donors.

Saturday

Prepare meals to feed the hungry. Lead group prayer and bible study. Schedule follow-up visits, and recurring prayer and bible study sessions. Encouraging them in their faith in God.

Sundays

Meet with the intercessory prayer team to pray and establish new prayer points and strategies for the missionary team. After which, she attends the regularly scheduled worship service.

The missionary work [REDACTED] performs is a traditional component of the Christian church and faith and is vital to reaching, touching, serving and bringing hope to human beings everywhere regardless of their race, gender or religious affiliation.

As a Christian ministry, we follow the teachings of Christ. We aim to emulate the good deeds that Christ did and encourages all followers to do likewise. The biblical teaching of Christians cited below, clearly shows that the missionary local/foreign mission support staff role is applicable to the biblical teaching and is carrying out the religious belief of our ministry beliefs.

‘For I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me, I was naked and you clothed me, I was sick and you visited me, I was in prison and you came to me.’ Then the righteous will answer him, saying, ‘Lord, when did we see you hungry and feed you, or thirsty and give you drink? And when did we see you a stranger and welcome you, or naked and clothe you? And when did we see you sick or in prison and visit you?’ ... Matthew 25:35-40

In the May 11, 2012 decision to deny the petition, the director found that the petitioner failed to establish that the prospective position qualifies as a religious occupation. Specifically, the director stated that the petitioner failed to establish that the duties relate to a traditional religious function.

On appeal, the petitioner argues as follows:

Missionary work is founded on the doctrine of Christ and faith in Jesus Christ and his atonement for our sins. It is a traditional religious function of the church. The church mission is to "Go ye therefore, and teach all nations, baptizing them in the name of the Father, and the Son, and of the Holy Ghost. Teaching them to observe all things whatsoever I have commanded you:..." Therefore, Missionaries are commissioned servants to bear testimony of Jesus Christ by the power of the Holy Spirit that will introduce faith in Christ in the souls of those who hears. WE are commanded to carry out the "Great Commission" to expand the Kingdom of God here at home and around the world. Missionary work is God's work and the desire of the Missionary is to follow the example of Christ and to do God's will and help in this great work. The Missionary is called to be conformed to the image of Christ Jesus in faith, humility, obedience, and most importantly a life of prayer which is inherently a traditional religious exercise that serves no secular function.

Therefore, the role of missionary in our organization is entirely a traditional religious function. The Missionary make regular visits to the sick and homebound in a poverty stricken community where many of the people visited are left alone without families to take care of them. The Missionary visits has [sic] brought comfort, hope and strengthened the faith of many during these visits, and continues to do so. Many have shared that their lives have been changed, encouraged, healed and renewed their faith in God because of the visits by the beneficiary. Prior to the beneficiary coming to the organization, there were no regular Missionary visits due to no availability in the schedules of the other missionaries. The beneficiary demonstrates a servants' heart and true desire to continue in the great work of Christ.

The petitioner submits two letters of recommendation purportedly from individuals visited by the beneficiary as part of her missionary work. The petitioner also submits a flyer relating to a Thanksgiving dinner held by the petitioning organization, in which the beneficiary organized for free winter coats to be provided to local children.

The petitioner argues on appeal that the beneficiary's missionary duties relate to a traditional religious function and relate to carrying out the creed and beliefs of the petitioning organization. However, the regulation at 8 C.F.R. § 204.5(m)(5) also requires the petitioner to establish that the duties of the prospective position to be recognized as a religious occupation, as opposed to duties normally carried out by members of the congregation on a volunteer basis. The petitioner has asserted that the beneficiary held the proffered position for several years as a "volunteer." Further, although the petitioner has indicated that there are other missionaries within the organization, it has submitted no evidence that any of these individuals are compensated or considered employees of the petitioning organization. Accordingly, the petitioner has not submitted sufficient evidence to establish that the position of "missionary of local/foreign missions support staff" is traditionally recognized as a compensated religious occupation within the petitioning organization.

For the reasons discussed above, the AAO agrees with the director's finding that the petitioner failed to establish that the proffered position qualifies as a religious occupation under the regulations.

As an additional matter, the AAO finds that the petitioner has not 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 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)(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 March 10, 2011. 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.

According to the Form I-360 petition, the beneficiary arrived in the United States on June 20, 2007 in B-2 nonimmigrant visitor status which expired on December 19, 2007. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status “may not engage in any employment.” The record does not indicate that the beneficiary held any lawful status subsequent to the expiration of her B-2 status, or that she held any status that would have authorized her to engage in employment in the United States during the qualifying two-year period. Accordingly, any work performed by the beneficiary during that time is not considered qualifying prior experience under 8 C.F.R. § 204.5(m)(4) and (11).

On the petition, the petitioner indicated that the beneficiary “has spent the last three years serving Patrick Stanton Ministries.”

On February 8, 2012, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary’s work history. The notice instructed the petitioner to submit experience letters from current and former employers including a weekly breakdown of duties, “specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision.” The notice also instructed the petitioner to submit evidence that the beneficiary received compensation or evidence of self-support during the qualifying period. Additionally, the notice stated: “If any of the experience was gained while working in the United States provide evidence that the beneficiary was employed while in lawful status.”

In its letter responding to the notice, the petitioner stated that the beneficiary “has performed volunteer work in a professional capacity as Missionary – Local/Foreign Mission Support Staff within our ministry” since 2009. The petitioner additionally stated that the beneficiary “received no payment for volunteer work performed.” Elsewhere in the letter, the petitioner indicated that it “provides housing and food for her basic needs as well as donations from the congregation.”

Regarding the petitioner’s claim of the beneficiary’s volunteer work within the United States, such work is not considered to be qualifying experience. In the preamble to the proposed rule, USCIS recognized that although “legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program.” *See* 72 Fed. Reg. 20442, 20446 (April 25, 2007). The regulation at 8 C.F.R. § 204.5(m)(11) specifically requires that the alien’s prior experience have been compensated either by salaried or non-salaried compensation (such as room and board), but can also include self-support under limited conditions. In elaborating on this issue in the final rule, USCIS determined that the sole instances where aliens may be uncompensated are those aliens “participating in an established, traditionally non-compensated, missionary program.” *See* 73 Fed. Reg. at 72278. *See also* 8 C.F.R.

§ 214.2(r)(11)(ii). The petitioner has neither claimed nor established that the beneficiary was participating in such a program. Accordingly, any time the beneficiary may have spent in the United States “working” as a volunteer for the petitioner cannot be considered qualifying employment.

Although the petitioner suggested in response to the request for evidence that it provided the beneficiary with non-salaried compensation in the form of housing, food, and donations during the qualifying period, it has not submitted documentary evidence in support of this 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

Furthermore, the issue of whether or not the beneficiary was compensated has no effect on the beneficiary’s lack of lawful immigration status and employment authorization during the two-year qualifying period.

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.