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

[redacted]

DATE: FEB 02 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:

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 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, 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 a worship 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 letter and a copy of the beneficiary's work agreement.

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 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 petitioner filed the petition on August 26, 2009. Therefore, the petitioner must establish that the

beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date from August 26, 2007 onwards.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

> (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.

On the Form I-360 petition, the petitioner indicated that the beneficiary arrived in the United States on February 6, 2009. Therefore, the beneficiary was not in the United States throughout the entire two-year qualifying period. On the Form I-360, under "Current Nonimmigrant Status," the petitioner wrote "B-2." The record shows that the beneficiary entered the United States as a B-2 nonimmigrant visitor, a status that does not authorize employment in the United States. 8 C.F.R. § 214.1(e). The beneficiary's B-2 status expired on August 5, 2009. The record contains no evidence that the beneficiary has ever held any lawful status since the 2009 expiration of her tourist visa.

The director denied the petition on February 26, 2010, finding that the petitioner had failed to establish that the beneficiary maintained continuous employment in the two years preceding the filing of the petition on August 26, 2009, as the beneficiary had entered the United States as a B-2 visitor on February 6, 2009.

On appeal, the petitioner states that the beneficiary never violated 8 C.F.R. § 204.5(m) because she has been a member of her religious denomination since 2004 and has been an ordained worship pastor since 2004, she has been engaged in full-time ministry work since 2004, she is working without monetary compensation for her work until she receives work authorization from USCIS, and she receives "love gifs" and donations from the petitioner's church for expenses and necessities. The petitioner asserts that "money is irrelevant" in the Christian ministry because the primary goal is to fulfill the calling of God.

The petitioner highlights that 8 C.F.R. § 204.5(m) does not require that it pay the beneficiary for her religious services, but does require that the employment be full-time, which the petitioner asserts it was and is.

The petitioner states that the beneficiary is an ordained minister in good standing who has been a member of its congregation since February 2009. The petitioner states that the beneficiary has served as the worship pastor of the Filipino/Multi-Cultural Ministry of its church. The petitioner delineates the beneficiary's religious duties as well as her weekly schedule and espouses her religious work for its church.

The AAO notes that the beneficiary listed on her G-325A Form dated August 24, 2009 accompanying her Form I-485 petition that she had worked as a self-employed businesswoman in the Philippines from January 2000 to April 2008. The beneficiary additionally listed that she had been working as a worship pastor from January 2005 to April 2008 and that she had been unemployed from April 2008 onwards. Furthermore, in the petitioner's letter dated August 8, 2009 accompanying the Form I-360 petition, it stated that the beneficiary had instead been working as a worship pastor for [redacted] in the Philippines since 2004. The AAO also notes that the beneficiary's ordination certificate from her prior church overseas states that she became ordained in March of 2005. The petitioner has failed to explain how she began working as a worship pastor in January of that year or in 2004, whatever the case may be, if she was not yet ordained. Additionally, the beneficiary's prior church in the Philippines submitted a letter dated August 7, 2009, which states that she joined its church in 2003, whereas the petitioner claimed on appeal that it had been in 2004. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), 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.

Notwithstanding the aforementioned discrepancies within the record of proceeding, the AAO notes that the regulation at 8 C.F.R. § 204.5(m)(11) requires that the two years of qualifying experience immediately precede the filing of the petition and that it must have been authorized under United States immigration law. There is no provision in the regulations that allows a B-2 visitor to work in the United States in one of the positions described in 8 C.F.R. § 204.5(m)(2).

An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Comm'r 1986). The Ninth Circuit Court of Appeals, within whose jurisdiction this proceeding arose, has upheld the AAO's interpretation of the two-year experience requirement. *See Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007).

The above case law indicates that to be continuously carrying on the religious work means to do so on a full-time basis. While there have been numerous legislative extensions and amendments to the special immigrant religious worker program since 1990, at no time has Congress legislatively modified or overruled this agency's understanding of the term "continuous" as shaped by the case law described above.

The beneficiary appears to have been engaged in other, non-religious work during the qualifying period. She stated that she had worked as a self-employed businesswoman in the Philippines until she became unemployed in April 2008. Furthermore, the beneficiary's B-2 status expired on August 5, 2009 before the petitioner filed the Form I-360 petition on her behalf on August 26, 2009.

Under 8 C.F.R. §§ 204.5(m)(4) and (11), the petition cannot be approved, because the beneficiary's religious employment in the United States during the qualifying period was not authorized under United States immigration law. The petitioner has also failed to demonstrate sufficiently that the beneficiary's work as a worship pastor from January 2005 to April 2008 in the Philippines or from February 2009 onwards in the United States was both full-time and continuous leading up to the filing of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.