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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

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:

[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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition on June 23, 2009. The director treated the petitioner's subsequent appeal as a motion to reopen and reconsider. The director certified her denial the decision to the Administrative Appeals Office (AAO) for review on March 18, 2010. The AAO will withdraw the director's March 18, 2010 decision and remand the petition to the California Service Center for further consideration and action.

The petitioner is an individual. He seeks classification 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 for outreach ministry. Citing 8 C.F.R. § 204.5(m)(2), the director determined that the petitioner had failed to establish that he is currently compensated in a full-time religious occupation.

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 director's sole ground for denial is that the petitioner had failed to establish that he is currently compensated in a full-time religious occupation.

The regulation at 8 C.F.R. § 204.5(m)(2) provides that religious workers coming to the United States 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 director cited 8 C.F.R. § 204.5(m)(2) in her March 18, 2010 decision, finding that the petitioner failed to establish that he is "currently compensated in a full-time religious occupation." Contrary to the director's determination, § 204.5(m)(2) is prospective in nature; there is no requirement under this regulatory provision that the petitioner be "currently" compensated, only that he or she "be coming" to work in a full-time compensated position.

8 C.F.R. § 204.5(m)(10) provides that a petitioner must provide the following evidence regarding its intended prospective employment of an alien:

> (10) *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.

The AAO notes that the director issued a Request for Evidence (RFE) to the petitioner on January 13, 2010 asking, among other things, for copies of his last eight pay statements in order to establish that he was currently engaged in a full-time religious occupation. In his February 24, 2010 response, the petitioner failed to include such requested documentation, but later submitted it with a brief in response to the director's March 18, 2010 decision in which she had notified the petitioner that she would be certifying her decision to the AAO.

The director cited 8 C.F.R. § 204.5(m)(2) in her March 18, 2010 decision and stated that the petitioner should have submitted the eight requested pay statements. The AAO notes that 8 C.F.R. § 204.5(m)(2) does not apply to the issue at hand. Although [redacted] should have submitted this information when requested, the AAO finds that the record of proceeding establishes that this organization has the ability to compensate the petitioner for at least a 35-hour a week position. Accordingly, the AAO will withdraw this specific finding of the director.

However, although the AAO has overturned the director's single ground for denial, there are additional issues that preclude approval.

The regulation at 8 C.F.R. § 204.5(m)(4) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

> 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.

The regulation at 8 C.F.R. § 204.5(m)(11) further 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 [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] 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.

Therefore, the petitioner must show that he worked 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 Form I-360 on October 27, 2008. Accordingly, the petitioner must establish that he was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The record reflects that petitioner was admitted to the United States as an R-1 nonimmigrant on January 6, 2008. The records do not reflect any authorized nonimmigrant status prior to that date, nor does the record reflect who the petitioner's intending employer was at that time. During the qualifying period, according to a letter from [redacted] dated September 25, 2008, in addition to his work for his intending employer, the petitioner also purportedly worked for the [redacted] as a campus [redacted] from June 9, 2004 onwards. However, in response to the director's January 13, 2010 RFE, the petitioner had submitted a list of his previous employment and instead indicated that he had started working for the [redacted] in September 2004.

The petitioner has submitted an Internal Revenue Service (IRS) Form W-2 wage and tax statement for 2008 from [redacted] to the petitioner in the amount of $14,780.00. Itemized statements from the Social Security Administration confirm the petitioner's employment with [redacted]

Under 8 C.F.R. § 214.1(e), a nonimmigrant may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. The regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) require the petitioner's prior employment to have been lawful and authorized. On remand, the director must determine whether the petitioner's employment with [redacted] was authorized as part of his R-1 immigration status or whether this work, in fact, violated his R-1 status. If, at any time, the petitioner worked for an organization other than the organization that petitioned for his nonimmigrant status, the petitioner would be considered to have violated his status. Therefore, any work after such violation would necessarily interrupt the petitioner's continuous lawful experience during the requisite two-year period.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.