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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: Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: FEB 15 2012 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 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, initially approved the employment-based immigrant visa petition. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition and her reasons for doing so, and subsequently exercised her discretion to revoke approval of the petition on May 20, 2010. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 pastor. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition.

Counsel asserts on appeal that the beneficiary volunteered his services during the qualifying period and that his volunteer service was not employment and meets the experience requirement of the regulation. Counsel submits a brief and additional documentation in support of the appeal.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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 issue presented is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

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

(4) 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.

Therefore, the petitioner must show that the beneficiary 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 petition was filed on July 2, 2008. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The 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 [redacted] letter submitted in support of the petition:

> For the past two years [the beneficiary] and his wife have been regular attendees at Wesley United Methodist Church in Reading, PA. [The beneficiary] assists most Sundays with the morning liturgy, celebrates Eucharist, covers hospital calls and emergencies in the Pastor's absence and has participated in a variety of church activities including Church Council. Currently, he preaches monthly. . . .

The petitioner submitted no other documentation of the beneficiary's qualifying work experience. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). On March 26, 2010, the director notified the petitioner of her intent to revoke the petition, stating:

> Part 3 of Form I-360 indicates the beneficiary's most recent arrival to the United States was on February 13, 2006 in a classification of F-2, spouse of an F-1 student. It should be noted, this classification is not allowed to engage in any employment.
>
> The record contains no evidence to establish the beneficiary meets the requirements of 8 C.F.R. 204.5(m)(4) for the period in question.

In response, the petitioner submitted an April 20, 2010 letter from [redacted], in which he stated:

> [The beneficiary] came to our congregation . . . in February 2006, along with his wife [], who was at the time a student at a local university, I asked [him] to become my Assistant and to serve in several capacities and also lead worship occasionally. He subsequently flourished and was permitted to exercise his ministerial office within our congregation in a broader fashion. For the next three years [the beneficiary] served as my de facto assistant. He preached monthly, assisted at the Eucharist, covered hospital and other pastoral emergencies while I was away. As an experienced minister, [the beneficiary] had no difficulty with serving the congregation in a multitude of roles. His prestige and reputation in the African community also attracted a new set of adherents and visitors to the congregation.
>
> At no point during those three years did [the beneficiary] receive any financial compensation from the church; he served without pay so that he could continue to fulfill the mandate for which we clergy take Holy Orders. We believed that he was ineligible to receive monetary compensation without an approved immigrant visa. Yet, [the beneficiary] was committed and served with diligence. His full-time volunteer position has not been filled in Wesley and we will not hesitate to re-engage the services of [the beneficiary].
>
> . . .
>
> [The beneficiary] graduated from seminary in 2001. Thereafter he served at Wesley Methodist Church in Gambia. In consideration of his brilliance and the church's desire to optimize his gifts, he was granted study leave and awarded a scholarship for graduate level education in 2003. He graduated from Princeton Theological Seminary in 2004 and immediately returned to continue[] full time ministry. [The beneficiary] worked full-time at Wesley United Methodist church in a volunteer

> capacity from 2006 until he went to [the petitioning organization] in January 2010. Accordingly, [he] accumulated over NINE years of full-time ministry from his graduation from seminary to his assumption of duty at [the petitioning organization].

[redacted] letter is accompanied by a list of nineteen names; however, there is nothing to indicate the purpose of the list. The petitioner again submitted no other documentation to establish that the beneficiary worked in any capacity during the qualifying two-year period.

The director denied the petition, finding that the petitioner had not addressed the issue of the beneficiary's unauthorized employment. The director stated:

> The regulations define a religious worker as an individual engaged in a religious vocation. The regulation clearly require[s] that qualifying experience during the two years immediately preceding the petition must have been authorized under United States immigration law. The beneficiary had not been granted this authorization based on a valid status that would have authorized employment during the two years immediately preceding the filing of the petition. The only authorization for employment was subsequent to the filing of the petition.

On appeal, counsel offers three arguments regarding the beneficiary's qualifying work experience: the work was not employment, the work qualifies as "self-supported volunteer work," and the two years of the beneficiary's "volunteer work should be discounted as a 'break' in the continuity of work."

Counsel argues first that a "fundamental problem with the new regulations . . . is the wanton mixing and interchanging of crucial terms with independent and distinct legal definitions" and claims that the "intermingled terms are: 'experience,' 'work,' and 'employment.'" Counsel provides the Black's Law Dictionary definition of employment, work, and experience, stating that they are defined differently. Counsel asserts that the beneficiary was not engaged in employment as that term is used in the regulation at 8 C.F.R. § 274a.12-14 and, citing 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), that "experience" does not necessarily have to be paid or authorized under U.S. immigration law. Counsel then analyzes the regulation at 8 C.F.R. § 204.5(m) that he claims "jumble the terms" of work, compensation, and employment and concludes:

> It is clear that a Religious Worker beneficiary's "employment" in the United States (i.e., that which implies a "contract" and compensation), must be "authorized by immigration law" or else it would render the worker out of status. (Here, [the beneficiary] was on an F-2 visa while his wife was at university studies in F-1 status.) But a close look at the pertinent regulation shows that the test is really that whatever experience the beneficiary has come to gain did not arrive in violation of law. That is, section 204.5(m)(11) states not "employment" but that "Qualifying prior experience during the two years . . . must have been authorized under United States immigration law."

> That is, the pertinent part of the requirement for an individual seeking to immigrate based on a religious commitment is not that he had specific employment authorization, but that he gained the *EXPERIENCE* to immigrate on that basis. Clearly, and altogether reasonably, it is the two years of experience (or the lack thereof) – in mission work, leading pilgrimages, serving the poor, ministering to a parish, serving at mass, etc. – that will qualify (or eliminate) an applicant for the religious worker immigrant visa.
>
> Indeed, the regulations themselves emphasize this reality because they explain that volunteer work – that is, uncompensated work undertaken while the worker supports himself by other means – is plainly recognized in the regulations themselves. Subpart (iii) to this very regulation (8 C.F.R. § 204.5(m)(11)) states that the qualifying two years of "employment" (the term erroneously used in this subsection) qualifies if the applicant "received no salary but provided for his or her own support . . . ." Thus, volunteer work undeniably serves to meet the 2-year work/experience/employment requirement. [Emphasis in the original.]

Counsel's argument is not persuasive. First, the Act and the regulations set forth different requirements for each visa classification. The fact that the regulation governing temporary employment under section 101(a)(15)(H) of the Act, 8 C.F.R. § 214.2(h) may define "experience" in specific terms does not mean that the definition carries over to immigrant religious worker qualifications. In fact, each part of the regulation that governs a particular visa classification contains a definition section that defines the terms applicable to that specific visa classification. Thus, how experience is defined for aliens applying for benefits under section 101(a)(15)(H) of the Act is not relevant to those applying for benefits under section 203(b)(4) of the Act.

The AAO rejects counsel's assertion that the regulation contains a "wanton" mix of words with distinct legal definitions. The regulation at 8 C.F.R. § 204.5(m)(11) clearly refers specifically to providing proof of employment, not just "experience." While the regulation does refer to self-support, as discussed further below, it applies only to those religious workers who gain their qualifying experience in an established missionary program under an R-1 or B-1 nonimmigrant visa.

Counsel argues, alternatively, that the beneficiary's work during the qualifying period was "self-supported volunteer work" authorized under the regulation at (8 C.F.R. § 204.5(m)(11)(iii). Counsel cites to *Camphill Soltane v. DOJ*, 381 F.3d 143 (3rd Cir. 2004), a decision rendered under outdated regulations, without explaining the relevance of the decision to the current issue. On appeal, the petitioner submits a copy of a July 14, 2010 letter from [redacted] who identified herself as the beneficiary's mother-in-law. She stated that she had supported her daughter and son-in-law financially until her daughter graduated in 2008.

Counsel's claim is without merit. In the supplementary information for the final rule, as it relates to self-support, the rule stated:

Compensation Requirements

USCIS proposed to add a requirement that the alien's work, under both the immigrant and nonimmigrant programs, be compensated by the employer. Specifically, the rule proposed amending the definition of "religious occupation" to require that an occupation be "traditionally recognized as a compensated occupation within the denomination." Commenters were concerned that the proposed rule would exclude many religious workers who do not receive salaried compensation, but may receive stipends, room, board, or medical care, or who may rely on other resources such as personal savings, rather than salaried or non-salaried compensation.

In response to the commenters' concerns, USCIS is clarifying that compensation can include either salaried or non-salaried compensation. Under the Internal Revenue Code, non-salaried support, such as stipends, room, board, or medical care, qualifies as taxable compensation unless specifically excluded.

. . .

Several commenters stated that the proposed compensation requirement would exclude programs that traditionally utilized only self-supporting religious workers from participating in the R-1 visa program. The comments noted that religious workers who are self-supporting receive neither salaried nor non-salaried compensation; instead, they may rely on a combination of resources such as personal or family savings, room and board with host families in the United States, and donations from the denomination's local churches. Additionally, the comments noted that self-supporting religious workers are currently admitted under the R-1 visa program. In response, the final rule will continue to allow these aliens to be admitted under the R-1 visa classification. USCIS will, however, to preserve its ability to prevent fraud, permit self-supporting religious workers only under very limited circumstances, and, consistent with other provisions of the final rule, require specific types of documentation.

The change provides that if the nonimmigrant alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work within the organization, which is part of a broader, international program of missionary work sponsored by the denomination.

USCIS again notes that the religious worker visas are not the exclusive means by which an alien may be admitted to the United States to peform self-supported religious work, including missionary work. Current regulations specifically provide for the admission of missionaries under the general visitor for business visa . . . . 73 Fed. Reg. at 72281-72282. *See also* Fed. Reg. at 72278.

As specifically provided for in the final rule, the only religious workers who may rely on self-support rather than actual salary or in-kind support as evidence of their prior employment are those workers in an established missionary program under an R-1 or B-1 nonimmigrant visa. In this instance, the record does not establish that the beneficiary was in a missionary program or that he was an R-1 or B-1 nonimmigrant. Instead, the record indicates that the beneficiary last entered the United States on February 13, 2006 as an F-2 dependent of an F-1 nonimmigrant student. As indicated in the supplementary information for the proposed rule:

> USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program. 72 Fed. Reg. 20442, 20446 (Apr. 25, 2007).

The beneficiary's voluntary work in the United States is therefore not qualifying experience for the purpose of this visa classification.

As a second alternative, counsel argues that the beneficiary's "volunteer work should be discounted as a 'break' in the continuity of work." The regulation at 8 C.F.R. § 204.5(m)(4) provides in pertinent part:

> 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.

Counsel asserts that the beneficiary meets this provision as he worked full time as a minister in Gambia before he entered the United States in an F-2 status. Counsel offers no explanation as to how the beneficiary's volunteer work was in furtherance of his religious training or constituted a sabbatical. If he was on sabbatical, he would not have been working, with or without payment. If he was working, he was not on sabbatical.

The petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

Beyond the issues of the beneficiary's employment, counsel also asserts that the regulations implemented in 2008 were designed to weed out fraud, and that the beneficiary's "volunteer

work was not fraud but verified, actual, qualifying, valid religious work." This argument has no legal basis and assumes that the beneficiary has worked in verified and qualifying work. Without the documentation outlined by the regulation at 8 C.F.R. § 204.5(m)(11), the petitioner has submitted no verifiable evidence that the beneficiary has engaged in any qualifying work during the statutory period.

Counsel also argues that the director failed to give the petitioner proper notice prior to revoking approval of the petition. Counsel bases his argument on his assertion that the beneficiary was not "employed" as that term is defined in his brief and that as the beneficiary was in a volunteer status, he was not "working" in violation of his F-2 visa status. The director's NOIR clearly set forth the reasons for her proposed revocation. Counsel's assertion that the beneficiary was not actually employed does not invalidate the director's NOIR.

Finally, counsel asserts that the regulations promulgated on November 26, 2008 are not applicable to the instant petition because it was filed on July 2, 2008. Counsel further asserts that the petitioner "had no advance notice that USCIS would (erroneously) claim that volunteer work would be disqualified."

When USCIS published the new rule in November 2008, it did so in accordance with explicit instructions from Congress. Supplementary information published with the new rule specified:

> All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information. 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

As the instant petition was pending on the effective date of the new rule, it is subject to the new evidentiary requirements.

Beyond the decision of the director, the petitioner has not established that it is a bona fide nonprofit religious organization.

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

> *Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:
>
> > (i) A currently valid determination letter from the [IRS] establishing that the organization is a tax-exempt organization; or
> >
> > (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

> (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:
>
> > (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
> >
> > (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
> >
> > (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
> >
> > (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

With the petition, the petitioner provided a copy of an October 16, 1974 letter to the United Methodist Church granting that organization a group exemption from taxation under section 501(c)(3) of the IRC. The petitioner submitted no documentation to establish that it is covered under the group exemption granted to the United Methodist Church. The petitioner has therefore failed to establish that it is a bona fide nonprofit religious organization as that term is defined in the above-cited regulation.

Additionally, the petitioner has failed to meet the requirements of the regulation at 8 C.F.R. § 204.5(m)(7), which requires the petitioner to submit a detailed attestation with details regarding the petitioner, the beneficiary, the job offer, and other aspects of the petition. The record contains no such attestation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 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.