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

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U.S. Citizenship and Immigration Services

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[redacted]

Date: Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

FEB 2 3 2012

IN RE: Petitioner:
Beneficiary: [redacted]

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, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church that seeks classification for 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), as a priest. The director determined that the petitioner had not established its ability to compensate the beneficiary or that the beneficiary had been working full-time and continuously in a religious occupation in the two years preceding the filing of the petition.

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 October 1, 2008, 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 October 1, 2008, 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 issues on appeal are whether the petitioner has established its ability to compensate the beneficiary and whether the petitioner has established that the beneficiary had been continuously working in a religious occupation in the two years preceding the filing of the petition.

The AAO agrees with the director's finding that the petitioner has not provided sufficient information demonstrating its ability to compensate the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

> *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 [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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 Part 8 of the petition, the petitioner stated that it would compensate the beneficiary $1,800.00 a month ($21,600.00 a year) and provide rent free housing for him. Within its July 9, 2009 letter of support, the petitioner stated that the beneficiary had served the church voluntarily in many positions (presumably not only in the proffered position of priest) since becoming a member in 2003.

In response to the director's October 20, 2009 Notice of Intent to Deny (NOID), the petitioner submitted Internal Revenue Service (IRS) Forms W-2 for work that the beneficiary performed for its church in 2007 and 2008 in the respective amounts of $13,440.00 and $15,360.00. In the same NOID response, the petitioner had additionally submitted the beneficiary's amended IRS Forms 1040 for 2007 and 2008. In the 1040X for 2008, the beneficiary stated that he was amending the return to include other income that was not filed with the original return. Within the 1040X for 2007, the beneficiary states that he is amending his prior return to include ministerial income not included within the original return. Like a delayed birth certificate, the amended tax returns created after the fact raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

In her decision, the director noted that the petitioner failed to submit sufficient evidence regarding its recent compensation of the beneficiary as requested in the director's November 27, 2009 Request for Evidence (RFE). The petitioner did not submit all of the requested audits, tax returns, or financial statements that had been signed and certified by the petitioner.

On appeal, the petitioner submitted copies of certain of the beneficiary's pay stubs from 2009 and 2010, uncertified IRS tax return transcripts for the beneficiary for 2007 and 2008, and uncertified IRS Form W-2 wage and income transcripts for the beneficiary for 2007 and 2008 in the respective amounts of $36,305.00 and $18,282.00. The AAO notes that the Los Angeles Unified School District issued the beneficiary's Form W-2 transcripts for work performed in 2007 and 2008, not the petitioner. The beneficiary's 2007 and 2008 tax return transcripts indicate that he did not earn additional salary from the petitioner for those years. These transcripts were dated January 25, 2010.

The petitioner failed to explain why it did not submit all of the signed and certified recent audits, tax returns, or financial statements that the director had requested in her November 27, 2009 RFE. Although the petitioner submitted copies of its 2009 and 2010 bank account statements, they did not

constitute evidence of its ability to compensate the beneficiary's proffered wage during the two-year period preceding the filing of the petition. The petitioner additionally has not submitted information regarding its proposed budget allowances for the beneficiary's position in the future. Accordingly, the AAO finds that the petitioner has failed to meet the requirements of 8 C.F.R. § 204.5(m)(10).

The AAO additionally agrees with the director's finding that the petitioner has not provided sufficient information demonstrating that the beneficiary had been continuously working in a religious occupation in the two years preceding the filing of the petition, from August 27, 2007 to August 27, 2009.

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

> *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 or certified copies of income tax returns.
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> (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
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> (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 appeal, the petitioner again submitted a letter dated July 9, 2009, which states that it has employed the beneficiary as a priest since July of 2007. The petitioner delineated, as it had done in the past, the beneficiary's duties as a priest with [redacted] At the time of filing

and consistently thereafter, the petitioner has identified the beneficiary's position as priest. The beneficiary's key job duties include:

- Evangelism, morning, and evening worship activities every Sunday,
- Baptism of new members when available,
- Wedding of members,
- Burial of deceased members,
- Teaching Bible lessons every Wednesday evening,
- Counseling members when needed,
- Tutoring classes on Saturdays, and
- Visiting sick members.

Within its response to the director's November 27, 2009 RFE, the petitioner had submitted a weekly schedule for the beneficiary. The AAO notes that the majority of the beneficiary's purported activities on the schedule appear to be on Saturdays and Sundays or on weekday evenings. By the nature of the petitioner's response, it is not clear if the beneficiary had previously been working this schedule. Notably, the schedule as listed also does not appear to be full-time in nature. However, the petitioner stated on the Form I-360 petition that the priest instead is present and working in the church every day from 9:00 AM to 5:00 PM to pray with and to provide counsel to members. The petitioner also delineated the priest's additional worship activities on Wednesdays, Saturdays, and Sundays. This information dramatically conflicts with the above mentioned seemingly part-time schedule submitted. *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.

As previously mentioned, the petitioner submitted uncertified IRS Form W-2 wage and income transcripts for the beneficiary for 2007 and 2008 in the respective amounts of $36,305.00 and $18,282.00 issued by the Los Angeles Unified School District. The petitioner has not provided any information demonstrating that the beneficiary's work for the Los Angeles Unified School District was religious in nature.

The petitioner submitted a signed letter from the registrar of the Irvine University College of Business indicating that the beneficiary began taking classes there in the summer of 2009 and has an anticipated graduation date of June 2012. The petitioner additionally submitted the beneficiary's transcript from earlier that year from National University for classes in teaching and education. Based upon the record of proceeding, it is not clear whether the beneficiary continued working for the Los Angeles Unified School District beyond 2008. The petitioner has failed to demonstrate how the beneficiary has been able to go to school, perform his work with the Los Angeles Unified School District, and perform his purported full-time work with the petitioner's church.

The petitioner additionally submitted a signed letter stating that the beneficiary worked as a pastor in Mali from 1995 to 1999, but this purported employment predates the two-year period preceding the filing of the instant petition.

On appeal, counsel asserts that the beneficiary did not engage in any unauthorized employment, as he was married to a U.S. citizen. The AAO notes that simply being married to a U.S. citizen does not provide the beneficiary with any lawful status or authorized employment. However, the beneficiary did possess work authorization via approved Forms I-765 during the majority of the two-year period preceding the petition's August 27, 2009 filing. However, the beneficiary did not possess work authorization from April 19, 2008 to December 22, 2008. Thus, he did not work in an authorized status during the entire qualifying period.

The AAO finds that the petitioner has failed to demonstrate that beneficiary has been continuously working as a minister or in a qualifying religious occupation or vocation full-time for at least the two-year period immediately preceding the filing of the petition.

Accordingly, the AAO finds that the petitioner has failed to meet the requirements of 8 C.F.R. §§ 204.5(m)(10) and (11).

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.