

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**

[REDACTED]

C1

DATE: **FEB 29 2012** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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:

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 and it 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 minister. 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 prior to the filing of the petition. The petitioner submits a letter and additional documentation in support of the appeal.

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 on appeal 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.

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 August 27, 2009. 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 [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.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary was present in the United States pursuant to an R-1 nonimmigrant religious worker visa that expired on March 22, 2007, and that it had applied for an extension of that visa status. The record contains a copy of an April 2, 2004 Form I-797, Notice of Action, approving the beneficiary for R-1 status to work or the [REDACTED] valid from March 30, 2004 to March 22, 2007. The record also contains a copy of a March 28, 2007 Form I-797 notifying the petitioning organization of the receipt of its Form I-129, Petition for a Nonimmigrant Worker.

In its August 15, 2009 letter submitted in support of the petition, the petitioner, through its chief executive officer, [REDACTED] stated that the beneficiary "has been a full communicant member" of the petitioning organization since 2006 and that he "began serving as a Religious Minister" with the organization in March 2007. The petitioner further stated:

In his capacity as the Religious Minister, [the beneficiary] has been conducting and assisting a regular weekly worship service offering pastoral care and pastoral direction to a cross cultural immigrant community. He conducts the worship services during the week, preach the gospel, and serve sacraments and Holy Communion to members in the church as well as those who are in hospitals. He also offers a teaching ministry, teaching catechism and foundational Biblical doctrines and serving Home Cell churches conducting weekly prayer meetings.

The petitioner submitted copies of the beneficiary's IRS Form W-2, issued to him by [REDACTED] in 2007 and 2008, indicating that he was paid wages of \$12,110 and \$17,992, respectively. The petitioner also provided copies of the beneficiary's tax return transcripts for the same periods. The petitioner submitted no documentation with the petition to establish that the beneficiary worked during 2009.

In a January 12, 2010 request for evidence (RFE), the director requested additional documentation from the petitioner to establish the beneficiary's qualifying work history and specifically instructed the petitioner that "[i]f any of the experience was gained while working in the United States provide evidence that the beneficiary was employed while in a lawful status." In response, the petitioner provided a copy of the beneficiary's 2009 tax transcript indicating that he reported wages of \$22,751 in 2009 and a copy of the beneficiary's Social Security Earnings Record, which reflects earnings from 2004 through 2009. Regarding the beneficiary's immigration status, the petitioner stated that the beneficiary "has served as a minister and evangelist since March 2004 (on an R1 visa). He was employed with our affiliate [REDACTED] and then in 2007 he moved to

██████████ to with [sic] us” In a February 4, 2010 statement, ██████████ stated:

In 2004 we filed an R1 petition for [the beneficiary] which was approved and valid from March 30, 2004 until March 22, 2007. In 2007 he was transferred to work with [the petitioner who] filed an extension for him and also requested a transfer of employment”

The director denied the petition, finding that the beneficiary did not have “authorization to work at the petitioner’s organization since his previous R-1 status expired on March 22, 2007.” On appeal, the petitioner states:

Beneficiary completed 3 years of R-1 status and as allowed has filed an extension for 2 more years to continue to work for the same employer (Petitioner) and the extension was filed prior to the expiration of the R-1 status.

Beneficiary has not received a decision of the status of his extension even by August 2009 more than 2 years after filing the I-129 petition for an extension of the R-1 status.

Since R-1 status religious worker has a 5 year period to stay in R-1 status by the immigration law the beneficiary and the petitioner assumed that R-1 status will be extended and USCIS has never asked for any additional documents nor denied the petition for R-1 extension.

The petitioner further alleges that the beneficiary has been lawfully employed with the petitioning organization for more than two years. The petitioner’s argument is without merit. First, the petitioner was not the petitioning employer on the initial Form I-129 filed on behalf of the beneficiary and the request for an extension was not to work for the same employer. Additionally, the request for an extension was filed one day before the expiration of the beneficiary’s R-1 status. Furthermore, the petitioner’s assumption that the petition would be automatically approved, even if the petitioning employer had remained the same, is without basis.

The petitioner admits that the beneficiary had no authority to work in the United States following the expiration of his R-1 status. Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in lawful status in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

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.