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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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Date: **JAN 03 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
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:

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 petitioner was not eligible for the visa preference classification. Accordingly, after notifying the petitioner of her intent to revoke approval of the petition and her reasons for doing so, the director subsequently exercised her discretion to revoke approval of the petition on January 18, 2008. On December 16, 2008, the Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO affirmed the director's March 10, 2010 decision. The matter is now before the AAO on a motion to reopen and to reconsider. The motion will be granted; the previous decision of the AAO will be affirmed and the petition will be denied.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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 religious instructor and pastoral assistant. The director determined that the petitioner had not established that the duties of the proffered position relate to a traditional religious function and that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

On motion, counsel asserts that “[b]oth the California Service Center and the AAO have made serious errors in this case and their evaluation of the evidence and the misapplication of law.” Counsel submits a brief and additional documentation in support of the motion.

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 first issue presented is whether the petitioner has established that the proffered position qualifies as that of a religious occupation.

The first issue presented on motion is whether the petitioner has established that the proffered position qualifies as that of a religious occupation.

On November 26, 2008, USCIS issued new regulations for special immigrant religious worker petitions. Counsel assets on motion that the AAO incorrectly applied the new regulations to the instant petition and that pursuant to *Camphill Soltane v. DOJ*, 381 F.3d 143 (3rd Cir. 2004), a religious occupation can encompass both religious and secular duties.

The regulation in effect at the time the petition was filed on March 2, 2006 provided at 8 C.F.R. § 204.5(m)(2):

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation did not define the term “traditional religious function” and instead provided a brief list of examples. The list revealed that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation stated that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflected that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derived from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Counsel's argument that the AAO's "utilize[d] the definition of religious occupation from the new regulation with respect to the new requirement that the position must be defined and recognized by the governing body of the denomination" is without merit. Prior to the implementation of new regulations on November 26, 2008, USCIS interpreted the term "traditional religious function" to require a demonstration that the duties of the position were directly related to the religious creed of the denomination, that the position was defined and recognized by the governing body of the denomination, and that the position was traditionally a permanent, full-time, salaried occupation within the denomination. A review of past AAO decisions confirms the consistency of the AAO's interpretation and that this interpretation is consistent with the codified requirements set forth in the November 2008 regulations.

Counsel also asserts that in response to the November 6, 2007 NOIR, the petitioner submitted "a certificate from [REDACTED] (the governing body of the denomination) that the position of Religious Instructor/Pastoral Assistant is a traditional religious occupation and not a general position performed by volunteer laity." The petitioner resubmitted the document on appeal. A review of the record reveals a November 26, 2007 certificate from [REDACTED] verifying that the position of religious instructor/pastor assistant is a traditional religious occupation and stating, without reference to a specific rule or regulation, that its rules and regulations define the position as "a leader who has the needed requirements and experience to mentor people spiritually and mentally towards the Lord, Jesus Christ." The statement in the AAO's decision that no evidence indicates that the position is recognized as a religious occupation within the denomination is withdrawn. However, the certificate does not specify the "needed requirements and experience" for the position and does not indicate that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

As discussed in the AAO's previous decision, the record also contains a certificate of employment and a certificate of salary from the [REDACTED] verifying that the beneficiary worked as a religious instructor and pastor assistant with that organization from August 1998 to August 2003 with a monthly salary of approximately \$300 (USD). As noted in the decision, this relatively low salary appears inconsistent with full time employment.

Counsel's assertion that the fact that the petitioner has filed 11 previous religious worker positions for pastoral assistants is evidence "that the position is one that is recognized and utilized by the church" is not persuasive. On the contrary, the fact that the petitioner has filed 11 petitions for the same position raises further questions about the legitimacy of the position and its use within the petitioning organization.

The petitioner has submitted insufficient documentation to establish that the proffered position qualifies as that of a religious occupation and that the AAO's previous decision was in error.

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

The regulation at 8 C.F.R. § 204.5(m)(1) in effect at the time the petition was filed stated that a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition had “been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

The regulation at 8 C.F.R. § 204.5(m)(3) stated, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on March 2, 2006. Therefore, the petitioner must establish that the beneficiary was continuously working as a religious instructor and pastoral assistant throughout the two-year period immediately preceding that date.¹

As discussed in the AAO’s previous decision, the record contains a copy of an unsigned and undated “employees list” submitted to USCIS in connection with another religious worker petition filed by the petitioner. The letter, on the petitioner’s letterhead, identifies the beneficiary as a “janitor” whose duties were to “Maintain[] our church building. Repair as necessary.” The petitioner alleges that it had submitted the petition using a different attorney, and on counsel’s instructions, submitted a list of all of its employees, their titles, and a detailed description of their duties. The petitioner alleges that the attorney “mistakenly” identified the beneficiary of the current petition as a janitor. The petitioner asserts that the attorney “did not confirm the positions with the Senior Pastor or the other religious worker before submitting the document. Also, the other religious worker provided information based on their opinion and not the facts.” The petitioner states that rather than serving as the janitor, the beneficiary “is in charge of the janitorial department and takes care of all the janitorial expenses.” The petitioner provided a copy of the employee list that it stated was “constructed” by the attorney’s office and a copy of the list that it stated it provided to the attorney. Neither list is dated; however, the list that the petitioner stated that it provided to the attorney is signed and on the petitioner’s letterhead. That list does not include any position of janitor or any details of the job duties.

¹ The AAO inadvertently applied the 2008 regulation to its analysis of this issue. However, this issue was not raised by counsel on motion.

Also as discussed in the AAO's previous decision, the petitioner provided no explanation as to why the attorney would have redrafted the list of employees to include a janitor, added specific details of the position, added the position of pianist to the employee list, and submitted that list to USCIS on the petitioner's letterhead. The petitioner did not submit on appeal, nor does it do so on motion, any explanation or documentation from the attorney confirming the petitioner's claimed version of events.

On motion, the petitioner submits a copy of the beneficiary's June 28, 2009 master of divinity degree awarded from the American International University. The certificate indicates that the beneficiary was admitted for study on September 1, 2006. Counsel argues that the beneficiary's receipt of a master of divinity degree "is consistent with a finding that he was employed as a pastoral assistant and inconsistent with a finding that he was employed as a janitor." However, there is nothing on the face of the certificate that would indicate that the beneficiary was employed as a pastoral assistant and the mere possession of an advanced degree does not mean that an individual is working within his academic field.

The petitioner submitted statements from three of its pastors, a member of its elder board, the director of its mission department, and joint statements from members who said they attended the beneficiary's bible study groups. The petitioner also submitted a statement from [REDACTED] who stated that he was a member of the [REDACTED] and that he had attended the petitioner's "midweek early morning prayer/study service" since 2004. [REDACTED] stated that he has benefited as a citizen because of the beneficiary's "welcoming and encouragement" at these services. He stated that the beneficiary arranged for a translator for him, called him when he did not show up for services, and visited him when he was hospitalized. [REDACTED] stated that he and the beneficiary had developed a friendship and that the beneficiary has provided him with "valuable spiritual guidance."

Citing *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988), the AAO determined that the statements provided by these individuals did not provide independent and objective evidence to resolve the discrepancies in the petitioner's evidence. Counsel argues on motion that the AAO incorrectly analyzed the significance of the statements from the church members and that:

The AAO engaged in a logical fallacy in stating that persons associated with the church cannot provide objective testimony. Had an affidavit been produced from a person not associated with the petitioner, it no doubt would have been dismissed as unreliable as the affidavit-maker would not have been in a position to know the relevant facts.

The AAO refers to [REDACTED] as a friend of the beneficiary. This conclusion ignores the substance of the affidavit as [REDACTED] is actually not associated with the church . . .

The AAO decision has completely ignored and failed to address the argument raised by [the petitioner] that the affidavits should be deemed reliable as they

were submitted in the face of allegations of fraud. . . . The church argued in its Statement of Appeal that from the context of the affidavits it is clear that these persons are all aware of the suspicion of fraud, but have nevertheless stepped forward to confirm [the beneficiary's] true occupation. It also argued that the group included many ordained ministers whose veracity should be considered more reliable than ordinary persons. These arguments have been completely ignored and remain unaddressed by the AAO who in a conclusory fashion found the affidavits to lack independence or objectivity.

Counsel's analysis undermines his argument. First, he acknowledges that the purpose of the letters from [REDACTED] and members of the petitioner's church was to counter an allegation of fraud or misrepresentation. As the AAO stated in its decision, the petitioner must resolve any inconsistent evidence in the record by independent objective evidence. The petitioner must provide competent objective evidence to resolve or explain inconsistencies in the record. *See Matter of Ho*, 19 I&N Dec. at 591-92. While counsel refers to the letters submitted by the petitioner as affidavits, none are made under oath, and counsel fails to explain how these unsworn statements from members of the petitioning church and the beneficiary's friend are from disinterested and unbiased persons who can provide objective testimony regarding his activities at the church. Counsel also suggests that ministers are inherently more truthful than "ordinary persons" while failing to provide any empirical evidence to support this conclusion and ignoring the fact that the new USCIS regulations resulted from a Congressional mandate to reduce fraud in the religious worker immigration program. Further, counsel argues that had an affiant not been a member of the petitioning organization, the affidavit "no doubt would have been dismissed as unreliable as the affidavit-maker would not have been in a position to know the relevant facts." This is a specious argument that assumes that an affiant from outside of the organization would testify to the same facts and with the same details as a person within the church. Each affiant must testify as to his or her own knowledge of events based on his or her own experience with the beneficiary.

The petitioner submitted no documentation such as a contemporaneous church program or brochure that would identify the beneficiary in the position claimed. While the petitioner submitted an employee listing, it originally identified the beneficiary as a janitor. Other than a statement from his friend, the petitioner also did not provide a statement from nonmembers of the church who had interacted with the beneficiary in his capacity as a religious instructor or pastoral assistant. Further, while [REDACTED] states that the beneficiary was cordial to him, made him feel welcome in the church and became his friend, none of this is inconsistent with the beneficiary's role as a caring and involved member of the church and is not evidence that the beneficiary was employed as an instructor and pastoral assistant. [REDACTED] did not state that he knew the beneficiary in either of those capacities.

The petitioner has submitted no objective or independent documentation to overcome the inconsistencies in the record regarding the beneficiary's employment. The petitioner submits no precedential decisions establishing that the AAO's previous decision was based on an incorrect application of law or policy. As the evidence presented does not overcome the grounds for the

previous dismissal, and no reasons are set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As no new evidence has been presented to overcome the grounds for the previous dismissal, and no reasons set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of June 3, 2011 is affirmed. The petition is denied.