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

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**PUBLIC COPY**

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[redacted]

DATE: JAN 10 2012 OFFICE: CALIFORNIA SERVICE CENTER [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:

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner identifies itself as an affiliate of [redacted] 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 it operates as a legitimate church; that the beneficiary has a *bona fide* offer of full time employment; or that the beneficiary possesses the necessary qualifications of a minister.

On appeal, the petitioner submits a letter from a church official and documentation relating to newly rented space.

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 . . . ; 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 concerns the activities of the petitioning church. The petitioner filed the Form I-360 petition on June 24, 2008. On that form, the petitioner listed its address (and the beneficiary's [redacted] and its Employer Identification Number [redacted] The initial filing also included a letter from Vasanti Patel, coordinator of the petitioning organization. The letterhead showed no physical address for the petitioning organization, only a post office box number [redacted]. Other materials show [redacted], as the location of IFC rather than the petitioning entity.

The petitioner submitted copies of two South Carolina certificates of incorporation, showing that IFC incorporated in 1992 and the petitioner incorporated in 2003. Tax and payroll documents show that the petitioner's [redacted] as claimed on Form I-360. The latter EIN belongs to IFC, which is a separate corporation and thus a separate legal entity from the petitioner. The same tax and payroll documents identify the beneficiary as the petitioner's only paid employee.

(Among these documents are IRS Form 941 quarterly tax returns signed by the beneficiary himself, stating his title as "co-ordinator.")

Various documents dated between 2003 and 2007 show a variety of physical addresses for the petitioning entity and for the beneficiary. The most recent documents show the beneficiary's address as [redacted]

On August 3, 2010, the director issued a request for evidence (RFE), stating, in part:

> The petitioner is located at [redacted] The evidence submitted with the I-360 shows this is a residential location. . . .
>
> Submit documentary evidence to prove religious activity at [redacted] Lexington, South Carolina . . . such as the petitioner's lease agreements, rental agreements, and/or mortgage payments; a copy of the city or county fire department occupancy permit for the petitioner's location; copies of utility bills and telephone bills; brochures, advertising; color photographs of the petitioner's location, both inside and outside the building.

The petitioner's response included a new letter from [redacted], this time showing the [redacted] address on the petitioner's letterhead. [redacted] stated that the petitioner "presently locates in a residential area. As any pioneering church, [the petitioner] has to begin in a residential area and at present preliminary work is underway to move the church to a non-residential area." The same letter indicates that "the petitioner has been conducting religious activities for the past 7 years [redacted]

The petitioner also submitted an employer attestation. Asked, on that form, to "[l]ist the specific address(es) or location(s) where the alien will be working," the petitioner listed only one address, [redacted] Exterior photographs of a house show a sign identifying the petitioning church, with the legend "Service Time Thursdays 7:00pm to 10:00 pm."

Despite the attestation identifying only one work location, even with the term "location(s)" showing that the petitioner could list more than one site, [redacted] stated that the beneficiary "is presently working alongside [redacted] conducting bible study classes, counseling sessions and worship service on Sunday evening under the banner of [the petitioning] church."

The petitioner submitted a "Thursday Service Member List," identifying 22 people who attend the Thursday night services. That total included the beneficiary himself and four members of his family. The schedule also referred to a "Sunday Evening Service [at] [redacted] "conducted by [the beneficiary] . . . under the banner of [the petitioner] . . . attended by the individuals enrolled in the rehabilitation program of [redacted]

In a joint letter, [redacted] respectively president and board member of [redacted] stated that the beneficiary conducted "Bible studies [for] people of Indian Origin" from [redacted] and subsequently conducted Bible studies for "about 50 people) on Mondays, Wednesdays and Thursdays from 5:00 p.m. to 6:00 p.m.; Sunday worship services from 4:00 p.m. to 6:00 p.m.; and taught "Life skill classes to homeless population" on Tuesdays and Thursdays from 3:00 p.m. to 6:00 p.m. This schedule has the beneficiary doing two different things on Thursdays between 5:00 and 6:00 in the afternoon.

Several witnesses claim to have attended services at [redacted] including two ministers and three individuals identified as members of the petitioner's congregation. The latter three witnesses each also referred to "corporate" services every Sunday at [redacted] None of the witnesses identified any activity by the petitioning church apart from the three-hour Thursday night service.

The director denied the petition on October 5, 2010, in part because the petitioner failed to submit documentary evidence to show that the petitioner conducts any church activities beyond the weekly Thursday night meeting. The director stated: "The evidence of record only indicates that the petitioner conducts Thursday evening bible studies for it's [*sic*] members at the beneficiary's home. The church members all appear to be attending all other functions and services elsewhere." The director concluded: "The petitioner has failed to establish that the [petitioning entity] is acting as anything more than a bible study on Thursday night."

On appeal, [redacted] states:

> If there is a doubt about the magnitude of the work involved in the church and the time the beneficiary has to spend in ministering to the parishioners and to take care of the smooth running of the church, we would very much like the USCIS [U.S. Citizenship and Immigration Services] to come and inspect the church.
>
> The USCIS decision mentions that the records or any letters were not submitted as the evidence of beneficiary's involvement with the chaplaincy work, participating in special events such as baptisms [and] marriage services. We would welcome an opportunity to produce all those documents if the USCIS wish to visit our church and do a comprehensive check on all the necessary documents to be convinced that the World Harvest International Church is a legitimate and credible nonprofit organization . . . involved in doing God's ministry.

The petitioner does not explain why it did not submit the above-described documents on appeal. It cannot suffice for the petitioner to assert that documentation exists for the director to review at some future point. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner submits copies of letters dated late October 2010, concerning an agreement allowing the beneficiary to hold 4:00 p.m. Sunday services at [redacted] church at [redacted] in a chapel space that "can accommodate only 28 people at the most." These agreements do not demonstrate that the petitioner operates as a full-time church or religious organization. Even if it did, the newly documented agreement was not in effect when the petitioner filed the petition in June 2008. The regulation at 8 C.F.R. § 103.2(b)(1) requires the petitioner to show that the petition is approvable as of the date of filing. USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). Therefore, the new execution of a rental agreement after the denial date cannot retroactively show that the petition was approvable in June 2008.

There is no concise, specific requirement in the regulations that the petitioning entity must operate full-time, but there is a requirement that the petitioner extend a full-time job offer to the beneficiary. *See* 8 C.F.R. § 204.5(m)(2), which defines full-time employment as occupying at least 35 hours per week. It stands to reason, therefore, that the petitioner can only employ the beneficiary full-time if the entity engages in some sort of full-time religious activity. The AAO affirms the director's finding that the petitioner has submitted no credible evidence that the petitioning entity is directly involved in religious activities outside of a three-hour Thursday night meeting at the beneficiary's house.

The requirement of a full-time job offer leads to the next stated ground for denial. The director concluded that the petitioner had not credibly shown the existence of a full-time job offer.

The petitioner's initial filing contained little information about the offer of employment. [redacted] claimed that the beneficiary "began serving as a Religious Minister, a full time employee at the [petitioning] Church since July 09, 2003. [The beneficiary] earned approximately $30,212.00 per year as his salary, paid by [redacted] with full benefits."

Tax and payroll documents, including IRS Form W-2 Wage and Tax Statements, show past payments to the beneficiary consistent with the stated salary. In the absence of other concerns, such payroll documentation is *prima facie* evidence of past employment; but other concerns are not absent in this proceeding. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon 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. *Id.* at 582, 591-92.

The petitioner's initial submission included this schedule, signed by IFC administrator [redacted]

| Hrs/week | Responsibilities |
|---|---|
| 10 | Preaching [at] Sunday services. Serving of sacraments and Holy communion to immigrants that are sick, visiting hospitals, prisons and community weekly spiritual events. |
| 8 | Teaching Catechism and foundational Biblical Doctrines of Dedication, Water Baptism, Holy Communion and Christian Wedding. |
| 8 | Establishment of Home Cell churches and conducting weekly prayer meetings among the immigrant communities in their own local language. |
| 8 | Preparing and ministering Cross Cultural Multi ethnic literature and church worship music in the native language. |
| 8 | Spiritual counseling and discipleship instruction classes for new believers from minority immigrant community. |

In the August 2010 RFE, the director requested further specific information about the beneficiary's claimed duties, as well as evidence to show that the congregation is of sufficient size to require the beneficiary's full-time services. In response, the petitioner submitted a new schedule:

| Job Description | Hour/day (Approx) | Hour/Week (Approx) |
|---|---|---|
| Teach and preach the Word of God in weekly church service and Sunday evening service | 3 hrs | 12 hrs |
| Provide Chaplaincy services to individuals in hospitals, prisons, homeless shelters, at shut in's going thru recovery because of surgery or traumatic experiences, at business establishments where ever requested. This involves spiritual counseling and sharing the word of God from the bible. Ultimately fostering the discipleship of the individual according to the teaching of Jesus Christ. | 4-5 hrs | 20 hrs |
| To officiate at special event services baptism, dedication, marriage, and funeral; serving the sacraments and Holy Communion | 2 ½ hour | At least 7 ½ hour |
| Personal prayer and bible study, clerical work | 1 hours | Approx 7-8 hours |
| Meeting with other ministers to plan and prepare for worship services | 1 hour | 2-3 hours |

The director, in denying the petition, observed that the two schedules reproduced above do not closely match one another. Furthermore, as noted previously, the petitioner claimed 17 attendees at its Thursday services, not counting members of the beneficiary's own family who live in the house where those services take place. On its employer attestation, the petitioner claimed "25+" members

overall. The director found that the small congregation size does not appear to justify the beneficiary's claimed full-time schedule. The petitioner did not explain how a congregation of about two dozen members requires "at least 7 ½ hour[s]" of "special event services" every week, or why the petitioner's only employee needs to meet with other ministers to prepare for the weekly service.

The director concluded that "the petitioner has exaggerated the hours of the beneficiary's official duties in order to meet with Federal regulations," and that "inconsistencies within the petition bring doubt on the validity of the petition." On appeal, the petitioner asserts that "[t]he Church is thriving" under the beneficiary's leadership, and submits the previously-described materials showing that the petitioner rents additional space on Sundays.

The petitioner's submission on appeal does not address the director's legitimate concerns about the nature of the church and the beneficiary's role within it. The AAO will therefore affirm the director's finding in this regard.

A third ground for denial concerns the beneficiary's credentials as a minister. The USCIS regulation at 8 C.F.R. § 204.5(m)(9) states that, if the alien is a minister, the petitioner must submit:

> (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
>
> (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or
>
> (iii) For denominations that do not require a prescribed theological education, evidence of:
>
> (A) The denomination's requirements for ordination to minister;
>
> (B) The duties allowed to be performed by virtue of ordination;
>
> (C) The denomination's levels of ordination, if any; and
>
> (D) The alien's completion of the denomination's requirements for ordination.

In the initial submission, [redacted] stated that the beneficiary "received his religious education at the [redacted] an accredited Theological Institution,

by [redacted] Carolina." The petitioner submitted a copy of the beneficiary's transcript from that institution. The transcript, like much else in the record, bears the electronic facsimile signature of [redacted]

The director denied the petition, stating: "USCIS requires that all baccalaureate or higher degrees must be obtained [at] accredited universities, while the [redacted] is not." The director also listed four criteria to show that the beneficiary qualifies "to perform services in a specialty occupation." The list of criteria (including the accreditation requirement) is from the USCIS regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The criteria of a specialty occupation apply to H-1B nonimmigrants, not to special immigrant religious workers. This ground for denial, therefore, is invalid, as it rests on regulations that do not apply to the benefit sought in this proceeding. The AAO withdraws this ground for denial, but the other grounds, discussed above, remain.

Beyond the director's decision, another major disqualifying factor remains. The AAO may identify additional grounds for denial beyond what the Service Center identified 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).

While the petition was pending, USCIS published new regulations for special immigrant religious worker petitions. 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." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). The present petition was pending on November 26, 2008, and therefore the revised regulations apply to this proceeding.

The revised 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) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law. The beneficiary was in the United States during the entire 2006-2008 qualifying period. Therefore the regulations require the beneficiary to have been in lawful immigration status, with employment authorization, throughout that period.

Form I-360 instructed the petitioner to list the beneficiary's current nonimmigrant status and the expiration date of that status. The petitioner indicated that the beneficiary was an R-1 nonimmigrant religious worker. Instead of listing an expiration date, the petitioner stated: "Extension pending."

In the August 2010 RFE, the director instructed the petitioner to submit "evidence that the beneficiary was employed while in lawful status" and "evidence that the beneficiary was authorized to accept employment." The petitioner's response to the RFE did not address either of these issues. [redacted] stated that the beneficiary had worked for the petitioner "since July 2003 (on an R1

visa)." This claim appeared in a letter dated August 20, 2010, more than seven years after the beneficiary's R-1 nonimmigrant status commenced.

Section 101(a)(15)(R)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(R)(ii), allows admission of R-1 nonimmigrants "for a period not to exceed 5 years." An alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. 8 C.F.R. § 214.2(r)(6).

Even then, no alien receives a single five-year period of admission as an R-1 nonimmigrant. The regulation at 8 C.F.R. § 214.2(r)(4) establishes an initial admission period, while the regulation at 8 C.F.R. § 214.2(r)(5) permits the alien's employer to apply for an extension to cover the balance of the five-year admission period. When the beneficiary first became an R-1 nonimmigrant, the initial admission period was three years, with a two-year extension. Beginning in 2008, the revised regulations allowed an initial admission of 30 months, followed by a 30-month extension.

Given the statutory five-year limit on R-1 nonimmigrant status, and the beneficiary's continuous presence in the United States since 2003, the beneficiary could not possibly continue to qualify as an R-1 nonimmigrant as of 2010.

USCIS records show that the petitioner filed Form I-129, with receipt number [redacted] on June 5, 2003. The approval of that petition granted the beneficiary R-1 nonimmigrant status from July 9, 2003 to July 8, 2006. Seeking to extend the beneficiary's R-1 nonimmigrant status, the petitioner filed another Form I-129, with receipt number [redacted] on June 21, 2006. The director denied that petition and extension application on October 6, 2010. Thus, while the extension application was indeed pending as of the present petition's June 24, 2008 filing date, the beneficiary never received the requested extension of stay.

Under the USCIS regulation at 8 C.F.R. § 274a.12(b)(20), an R-1 nonimmigrant whose status has expired, but who has a pending application for extension of stay, is authorized to continue employment with the same employer for a period not to exceed 240 days beginning on the date of the expiration of the authorized period of stay. The beneficiary's initial R-1 nonimmigrant status expired on July 8, 2006. Therefore, the filing of the extension application authorized him to continue working for the petitioner until 240 days after that date, *i.e.*, until March 5, 2007. USCIS records do not show that the beneficiary held any further employment authorization until October 8, 2009, when USCIS approved a Form I-765 Application for Employment Authorization, with receipt number [redacted] that the beneficiary had filed on July 13, 2009.

Given the above information, there is no evidence that the beneficiary had employment authorization between March 5, 2007 and the petition's June 24, 2008 filing date. Furthermore, because USCIS never approved the extension application, there is no evidence that the beneficiary had lawful immigration status after July 8, 2006. Therefore, the petitioner has not shown that the beneficiary continuously performed qualifying religious work in lawful immigration status, with employment

authorization, throughout the entire two-year qualifying period from June 2006 to June 2008. The beneficiary's lack of lawful status and employment authorization is, by itself, a disqualifying factor and grounds for denial of the petition.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.