U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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PUBLIC COPY

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[redacted]

Date: MAR 2 2 2012 Office: CALIFORNIA SERVICE CENTER FILE: [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 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 had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition. The director also determined that the petitioner had not established its ability to compensate the beneficiary or that it qualifies as a bona fide non-profit religious organization or affiliated tax exempt organization.

On appeal, the petitioner submits a copy of the Notice of Decision, a letter from the [redacted] as well as copies of documents relating to the finances of the [redacted] including a 2011 Proposed Budget and a General Ledger Activity Report.

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;
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> (ii) seeks to enter the United States –
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> > (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 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 petition was filed on May 28, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work status throughout the two-year period immediately preceding that date.

The USCIS 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:
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> > (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.
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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.
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> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

In a letter dated August 24, 2009, submitted with the Form I-360 petition, the petitioner states that the beneficiary has been working full time as a minister for the petitioner since April 2007. According to the petition and the director's findings, the beneficiary arrived in the United States on August 1, 1990 in B-2 nonimmigrant visitor status. The regulation at 8 C.F.R. § 214.1(e) states that aliens in such status "may not engage in any employment." Service records do not indicate that the beneficiary has ever held any lawful status in the United States that would have authorized him to work for the petitioner during the qualifying two-year period. Accordingly, any work performed by the beneficiary during that time is not considered qualifying prior experience under 8 C.F.R. § 204.5(m)(11).

On August 2, 2010, USCIS issued a Notice of Intent to Deny the petition, which in part instructed the petitioner to submit evidence that the beneficiary "was employed while in lawful status" during the two years immediately preceding the filing of the petition. In response, in a letter dated August 17, 2010, the petitioner argued that the beneficiary's work was lawful because the petitioner "agreed not to pay [redacted] a salary until he received a work permit." Any work performed by the beneficiary as a volunteer is not qualifying experience. In the preamble to the proposed rule, USCIS recognized that although "legitimate religious work is sometimes performed on a voluntary basis . . . allowing such work to be the basis for . . . special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program." *See* 72 Fed. Reg. 20442, 20446 (April 25, 2007). Accordingly, any time the beneficiary may have spent in the United States "working" as a volunteer for the petitioner cannot be considered qualifying employment. In the final decision of November 2, 2010, the director determined that the beneficiary was out of lawful immigration status throughout the two years immediately prior to filing the decision, and therefore did not acquire the requisite two years of qualifying experience.

In "Part 3." of the Form I-290B Notice of Appeal, the petitioner is instructed to "Provide a statement explaining any erroneous conclusion of law or fact in the decision being appealed." In this space, the petitioner has only written "PLEASE SEE ATTACHMENTS." No brief or letter from the petitioner was submitted to provide an explanation of the erroneous conclusion or conclusions being appealed. None of the evidence submitted on appeal relates to the beneficiary's lawful immigration status or authorization to work during the two years immediately preceding the filing of the petition. The AAO therefore, considers this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has failed to establish that the beneficiary had two years of lawful and continuous experience during the requisite two-year period.

The director also found that the petitioner had not established its tax exempt status as a bona fide non-profit religious organization or affiliated tax exempt organization as described in the regulation at 8 C.F.R. § 204.5(m)(8), which states:

> *Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:
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> (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
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> (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 Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, 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

In a letter in support of the Form I-360 petition, the petitioner states that it is "a charitable non-profit religious organization in the United States, which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code as it relates to religious organizations." Accompanying the petition, the petitioner submitted a determination letter from the IRS, dated March 30, 1964, establishing that the [redacted] of California and its related associations and churches qualify for a group exemption under section 501(c)(3) of the Internal Revenue Code of 1954 and a subsequent letter from the IRS, dated March 31, 1969, acknowledging that organization's name change to [redacted] The petitioner also submitted a letter from the [redacted] dated May 23, 2007, confirming that the [redacted] Santa Ana, is part of that organization and covered under the group exemption. The petitioner additionally submitted a letter from the [redacted] dated August 26, 2009, asserting that the petitioner is an active member of the [redacted] and therefore also covered under the group exemption.

In the August 2, 2010 Notice of Intent to Deny the petition, USCIS instructed the petitioner to submit evidence regarding its tax exempt status as described under 8 C.F.R. § 204.5(m)(8)(iii). The notice mentioned that the Religious Denomination Certification submitted by the petitioner was signed by the signatory of the petitioning organization, not the religious organization as described in 8 C.F.R. § 204.5(m)(8)(iii)(D). In response to the request for evidence on this issue, the petitioner

submitted a letter regarding its operation under the [redacted] and the [redacted] and asserting its tax exempt status, and resubmitted a copy of the August 26, 2009 letter from the [redacted] The petitioner also submitted organization literature in the form of church bulletins. In the final decision, the director determined that the evidence is insufficient to establish that the petitioner qualifies as a bona fide organization that is affiliated with a religious organization.

The petitioner did not address its status as a bona fide non-profit religious organization or affiliated tax exempt organization or submit any additional evidence regarding this issue on appeal. Therefore, the AAO considers this issue to be abandoned. *See Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. The petitioner has therefore failed to overcome the director's finding on this issue.

In the final decision, the director additionally found that the petitioner has not established that it will be able to compensate the beneficiary for his employment. The regulation at 8 C.F.R. § 204.5(m)(10) states:

> *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 documentation, such as IRS Form W-2 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 the Form I-360 petition Employer Attestation, the petitioner states that the beneficiary "will be compensated" and the petitioner will provide his transportation. In a letter dated August 24, 2009, submitted with the petition, the petitioner states that the beneficiary "will be compensated for his work and the [redacted] will support him in regards of accommodation, meals and transportation." The petitioner did not submit any IRS documentation relating to its ability to compensate the beneficiary, nor did it provide any explanation for its absence or provide any comparable, verifiable documentation regarding its finances.

In the August 2, 2010 Notice of Intent to Deny, USCIS stated:

> The petitioner stated in the employer attestation and in the letter that the beneficiary will be compensated for his work and the petitioner will support him in regards of accommodation, meals, and transportation. It is unclear if the beneficiary will be compensated by the petitioner. Additionally, evidence of record does not contain any initial evidence relating to compensation.

In response to the notice, the petitioner submitted a copy of a checking account statement covering the month of October of 2007. In a letter dated August 17, 2010, the petitioner stated that it had an agreement with the beneficiary that it would not pay him "until he received a work permit." In the final decision, the director found that the petitioner has not provided verifiable evidence of its ability to compensate the beneficiary.

On appeal, the petitioner submits a letter from [redacted], a copy of the [redacted] 2011 Proposed Budget," as well as a copy of a "General Ledger Activity Report" also for the [redacted] Nothing further was submitted regarding the issue of the petitioner's ability to compensate the beneficiary. Although the letter states that the beneficiary "is working full time with the [redacted] California including [redacted] it does not indicate that the [redacted] Association will be providing the beneficiary's compensation, nor does the budget submitted contain any information regarding payment of the beneficiary's salary. Further, none of the documents previously submitted by the petitioner have asserted that the beneficiary's compensation would come from the [redacted] Rather, the letter of August 17, 2010 mentioned above, submitted in response to the request for evidence, indicates that the petitioner intends pay the beneficiary's salary when he receives a work permit.

The AAO agrees with the director's finding that the petitioner has failed to establish how it intends to compensate the beneficiary. The petitioner has not submitted any IRS documentation relating to its ability to compensate the beneficiary, nor has it provided any explanation for its absence or provided any comparable, verifiable documentation regarding its finances.

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