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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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DATE: MAR 28 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.

Thank you,

*Perry Rhew*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, (“the director”) denied the employment-based immigrant visa petition. The petitioner timely filed an appeal to the denied petition. The matter is now before the Administrative Appeals Office (“AAO”) on appeal. The AAO will withdraw the decision of the director and remand the petition.

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/pastor of [REDACTED] the daughter church of [REDACTED]. On March 22, 2010, the petitioner filed a Form I-360 petition. On June 7, 2010, the director denied the petition. The director denied this petition because she found that the beneficiary had been engaged in unauthorized employment when he was self-employed as a handyman in 2005, and that any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(1) of the Act.

On appeal, the petitioner submits a brief and further documentation in order to overcome the director’s decision.

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 here is whether the beneficiary possesses two years of lawful work experience in the country immediately prior to the filing of the form I-360 petition. 8 C.F.R. § 204.5(m)(4) states that:

(m) *Religious workers.* This paragraph governs classification of an alien as a special immigrant religious worker as defined in section 101(a)(27)(C) of the Act and under section 203(b)(4) of the Act. To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) 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.  
(Emphasis added)

Further, 8 C.F.R. § 204.5(m)(11) states that:

(11) *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 documentation that the alien received a salary, such as an IRS Form W-2 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.  
(Emphasis added)

On appeal, counsel argues that the director based her determination on an irrelevant time period and states that the beneficiary has been in lawful R-1 nonimmigrant status during the requisite time period. The AAO concurs with counsel that any unauthorized employment by the beneficiary during 2005 does not have any relation to a determination regarding the beneficiary's continuous work experience for the two year period prior to filing the instant petition. The AAO makes no affirmative finding regarding the beneficiary's lawful and continuous employment during the requisite time period; only that the director's sole ground for denial cannot stand. The case will be remanded for the director to determine whether the petitioner has satisfied the eligibility requirements at 8 C.F.R. 204.5(m) to include continuous employment at 8 C.F.R. §§ 204.5(m)(4) and (11) and the petitioner's ability to compensate the beneficiary at 8 C.F.R. § 204.5(m)(10).

The director's decision is withdrawn. The director may issue a request for evidence and allow the petitioner a reasonable period of time to respond. Upon review, the director shall enter a new decision which, if adverse to the petitioner, shall be certified to the AAO for review.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and the entry of a new decision, which, if adverse to the petitioner, must be certified to the Administrative Appeals Office for review.