U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE FEB 0 6 2013 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:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected a subsequent appeal as untimely filed. The director reopened the petition and subsequently issued a second decision denying the petition. The matter is now again before the 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 an assistant pastor/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.

On appeal, the petitioner submits a brief and a letter from the petitioner, a copy of a Form I-797C, Notice of Action, acknowledging receipt of a Form I-290B, Notice of Appeal to the Commissioner, and a "Case Status" printout from the U.S. Citizenship and Immigration Services (USCIS) website. The petitioner additionally submits copies of decision notices issued by the Director, California Service Center, and the AAO relating to the instant petition, a previously filed Form I-360 petition, and a Form I-129, Petition for a Nonimmigrant Worker, filed by the petitioner on behalf of the beneficiary.

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 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 November 4, 2010. Therefore, the petitioner must establish that the beneficiary was continuously and lawfully performing qualifying religious work 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.
>
> (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.

On the Form I-360 petition, the petitioner indicated that it has employed the beneficiary as assistant pastor/minister since January 1, 2006. According to the petition and supporting evidence, the beneficiary entered the United States on July 14, 2005 in B-2 nonimmigrant status and was subsequently granted R-1 nonimmigrant status authorizing his employment with the petitioner from January 1, 2006 to December 31, 2008. The record indicates that on December 10, 2008, the petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to extend the beneficiary's nonimmigrant religious worker status. The director denied the Form I-129 petition on March 13, 2009, and the AAO dismissed a subsequent appeal of that decision on April 29, 2010.

Regarding the instant petition, on February 25, 2011, USCIS issued a Request for Evidence, in part requesting additional evidence regarding the beneficiary's work history. The notice requested

additional evidence of the beneficiary's qualifying employment during the two years immediately preceding the filing date of the petition including additional details about the beneficiary's duties and schedule as well as evidence of compensation in the form of Internal Revenue Service (IRS) wage and income transcripts and federal tax return transcripts for the years 2008, 2009 and 2010. The notice also specifically instructed the petitioner to provide evidence that the beneficiary held lawful status and employment authorization during the qualifying period.

In response to the notice, the petitioner submitted a copy of a December 30, 2005 employment contract between the beneficiary and the petitioner for employment as an assistant pastor to begin on January 1, 2006 for compensation of $2,100 per month plus additional expenses up to $700 per month. The contract listed the beneficiary's duties and additional letters from the petitioner provided information regarding his weekly schedule. The petitioner submitted Forms W-2 for the beneficiary for 2007 through 2010, indicating that he received $33,400 from the petitioner in 2007, $33,405 in 2008, $32,800 in 2009, and $33,850 in 2010. Additionally, the petitioner submitted the beneficiary's IRS Wage and Income Transcripts for the years 2008 and 2009 which matched the amounts listed on the submitted Forms W-2, as well as IRS Tax Return Transcripts for 2008 and 2009 which indicated that his total reported income for those years matched the amounts received from the petitioner. In an accompanying letter, the beneficiary indicated that he was informed by the IRS district office that transcripts for the year 2010 would not be available until June, 2011. The petitioner submitted an uncertified copy of the beneficiary's 2010 Form 1040 tax return listing total income of $33,850, along with an IRS e-file "Electronic Filing Notice" acknowledging receipt of the beneficiary's electronic tax return on March 8, 2011. The petitioner also submitted photocopies of the beneficiary's paystubs from the two-year qualifying period immediately preceding the filing of the petition.

Regarding the beneficiary's immigration status and employment authorization, the petitioner indicated on an amended page of the Form I-360 petition that an "appeal for the extension of stay is still pending." The petitioner submitted a copy of a Form I-797C, Notice of Action, acknowledging receipt of a Form I-290B (Receipt Number) filed by the petitioner on behalf of the beneficiary on May 26, 2010. The petitioner also submitted a copy of the beneficiary's R-1 approval notice authorizing his employment with the petitioner from January 1, 2006 until December 31, 2008, as well as a notice acknowledging receipt of the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status, on November 4, 2010, and a copy of an Employment Authorization Card issued to the beneficiary with validity dates of January 18, 2011 to January 17, 2012.

On May 26, 2011, the director denied the petition based on the petitioner's failure to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. The director stated that, despite the petitioner's assertion that an appeal of the Form I-129 petition was still pending, records indicated that the AAO denied the appeal of that petition in April 2010. The director found that the beneficiary lacked employment authorization and lawful immigration status for the portion of the qualifying period between the expiration of his R-1 status on December 31, 2008 and the filing of the instant petition on November 4, 2010.

On April 3, 2012, the AAO rejected an appeal of the May 26, 2011 decision as untimely filed. The director subsequently reopened the petition and issued a new decision denying the petition on July 2, 2012. In the decision, the director again found that the beneficiary lacked lawful status and employment authorization following the expiration of his R-1 status.

On appeal, the petitioner asserts that it filed a motion to reopen the Form I-129 petition following the April 29, 2010 dismissal of its appeal, and that the motion is still pending. The petitioner argues that if the motion is approved, the beneficiary "would be able to meet the required two year lawful work experience."

As the motion has now been dismissed, the petitioner's argument is moot. The regulation at 8 C.F.R. § 274a.12(b)(20) states that an alien whose status has expired but who has filed a timely application for an 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 expiration of the authorized period of stay" (emphasis added). Based upon the filing of the extension of the beneficiary's Form I-129, his work authorization would have been extended only to August 7, 2009, well before the end of the requisite period. Accordingly, the AAO agrees with the director that the petitioner has not established that the beneficiary held any lawful immigration status or employment authorization throughout the qualifying period.

Counsel for the petitioner also argues on appeal that the petitioner has overcome the grounds for the denial of its Form I-129 petition and the dismissal of the subsequent appeal. However, as that petition is not the subject of this proceeding, the AAO will not consider such arguments in the instant decision.

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.

ORDER: The appeal is dismissed.