



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: OCT 08 2013

OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the AAO, which remanded the petition to the director for a new decision based on revised regulations. The director again denied the petition and certified the decision to the AAO, which affirmed the director's decision. The matter is now before the AAO on a motion to reconsider. The AAO will dismiss the motion.

The petitioner is a Christian church of the Southern Baptist denomination. It filed the Form I-360 petition on July 26, 2006, seeking to classify the beneficiary as a special immigrant religious worker under 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. The director denied the petition on March 11, 2010, having determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition, and that the Southern Baptist denomination recognizes the beneficiary's position as a religious occupation. In its decision of January 30, 2013, the AAO withdrew the director's first finding but affirmed the second.

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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 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).

On motion, [REDACTED] senior pastor of the petitioning church, contests three points in the AAO's January 2013 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, 2015, 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, 2015, 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 AAO affirmed the finding that the petitioner had not established that it intends to employ the beneficiary in a religious occupation. The USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines a “religious occupation” as an occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The first point the petitioner raises on motion relates to the AAO’s comment, in an introductory paragraph, that “the beneficiary’s title has changed repeatedly over the course of this proceeding.” Pastor Kim states: “[t]he beneficiary’s Position title ‘a Religious Instructor’ has not been changed repeatedly over the course of this proceeding. . . . I submitted all documents . . . [showing] the beneficiary’s Position title ‘a Religious Instructor.’”

The AAO did not state that the change of titles was, itself, a ground for denial of the petition, but will address this point nevertheless. The petitioner did, as claimed, identify the beneficiary’s title as “religious instructor” on the Form I-360 petition and in accompanying correspondence.

In an undated letter submitted in June 2007, Pastor [REDACTED] stated that the beneficiary “has been authorized by our church to be Religious Instructor as Minister of Education and Director of Children’s Department since 2003.”

In an undated letter submitted in December 2007, Pastor [REDACTED] stated: “We have applied permanent resident [*sic*] for [the beneficiary] as Religious Instructor instead of Minister of Education because of

the lawyer's legal usage of the world. [The beneficiary] has been performing the works of Minister of Education since 2004."

On January 12, 2010, Pastor [REDACTED] signed an employer attestation, line 5 of which asked the "Title of position offered." The petitioner responded: "Director of Christian Education." In an accompanying letter, Pastor [REDACTED] stated: "The job title of the beneficiary is Director of Children [sic] Christian Education Department and Church Office Secretary." In a March 20, 2010 letter, Pastor [REDACTED] specified that he sought to employ the beneficiary to "assist him not only [in] the children's and education ministries but also church administration and office works."

The record demonstrates that the petitioner has provided several different terms for the beneficiary's job title. Even if Pastor [REDACTED]'s latest assertion were true, it would not be grounds for reconsideration because, as stated above, the changes of title were not grounds for denial of the petition.

Pastor Kim's second point on motion is "[a]bout the issue the petitioner had not established that [t]he beneficiary had the required two years of continuous qualifying work experience immediately preceding the filing date of the petition." The AAO withdrew that ground in its January 2013 decision, and found in the petitioner's favor. Therefore, further discussion of the issue will not materially change the outcome of the decision.

Regarding the remaining point, Pastor [REDACTED] states:

I submitted all evidences issued by the Southern Baptist denomination to prove the Southern Baptist denomination recognizes The beneficiary's Position as a Religious Occupation on December 11, 2006 to USCIS California Services [sic] Center. But USCIS did not accept and consider all evidences issued by the Southern Baptist denomination to prove the Southern Baptist denomination recognizes The beneficiary's Position as a Religious Occupation as affordable evidence.

Pastor [REDACTED] refers to the petitioner's response to a request for evidence (RFE) that the director issued on December 11, 2006, in which the director instructed the petitioner to provide additional details about the position offered to the beneficiary. In its January 2013 decision, the AAO stated: "The petitioner's response included tax documents but nothing further about the beneficiary's position."

The record shows that the petitioner's response to the December 2006 RFE did not contain any documentation from, or relating to, the Southern Baptist Convention or other denominational authorities. A cover letter from the petitioner's then-attorney of record, [REDACTED] reads:

This law firm is in receipt of your RFE letter dated December 11, 2006, which is attached herein. In response to your request, the following documents and explanations are submitted:

- 1) Forms W-2 and 1040 for the year 2006.

- 2) The above beneficiary has been supporting her and her family members for the last two years with the salary payments she has been receiving from the petitioner church. The above beneficiary has a spouse . . . and two children . . . as her family members.

It is hoped that the above documents and explanations, in addition to those submitted with the original I-360 Petition, are in full compliance with your request. Your favorable adjudication shall be greatly appreciated.

The only documents that the petitioner submitted in response to that RFE were copies of the beneficiary's Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement for 2006, and the beneficiary's IRS Form 1040 U.S. Individual Income Tax Return for the same year.

The record does not support Pastor [REDACTED]'s claim that the petitioner submitted evidence "issued by the Southern Baptist denomination to prove the Southern Baptist denomination recognizes [t]he beneficiary's Position as a Religious Occupation on December 11, 2006." The petitioner has therefore failed to establish grounds for reconsideration of the AAO's prior decision.

The petitioner has not established that the AAO's decision was based on an incorrect application of law or USCIS policy, or that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the AAO will dismiss the motion. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The motion is dismissed.