

(b)(6)

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

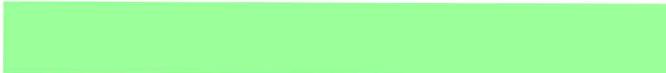


U.S. Citizenship
and Immigration
Services



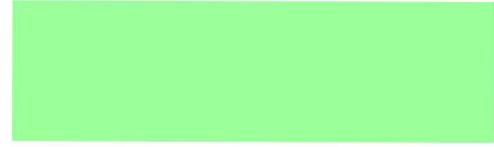
Date: **OCT 16 2013** Office: CALIFORNIA SERVICE CENTER

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)

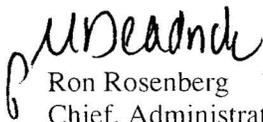
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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.

Thank you,


Ron Rosenberg
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 withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

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 associate pastor (minister). The director found the evidence insufficient to establish that the prospective employer qualifies as a bona fide non-profit religious organization in the United States.

On appeal, the petitioner submits copies of documents already in the record.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(3) provides that in order to be eligible for classification as a special immigrant religious worker, an alien must be coming to work for a bona fide non-profit religious organization in the United

States, or a bona fide organization which is affiliated with the religious denomination in the United States. The regulation at 8 C.F.R. § 204.5(m)(5) states, in pertinent part:

(5) Definitions. As used in paragraph (m) of this section, the term:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

The regulation at 8 C.F.R. § 204.5(m)(8) states:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (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.

The Form I-360 petition was filed on June 12, 2012. The petition identified the [REDACTED] as the beneficiary's prospective employer. Accompanying the petition, the petitioner submitted a copy of a January 31, 1964 letter from the IRS to the [REDACTED] in the United States of America confirming that organization's exemption from taxation under section 501(c)(3) of the Internal Revenue Code. The letter also indicated that the organization was granted a group exemption which would apply to its subordinates. The petitioner submitted copies of subsequent letters from the IRS to that organization, also called the [REDACTED]. The petitioner also submitted a copy of a letter from the [REDACTED] (USA), stating the following:

This is to certify that the [REDACTED] has a membership in good standing of this presbytery and is therefore, entitled to the Federal tax exemption granted to the [REDACTED] by the letter ruling attached hereto.

On October 22, 2012, USCIS issued a Request for Evidence (RFE) instructing the petitioner to submit additional evidence that it qualifies as a bona fide nonprofit religious organization. Specifically, the director instructed the petitioner to submit evidence to establish that it is "included in the group exemption," such as a "[d]irectory showing petitioning organization," or "[a]ny evidence showing eligibility of petitioning organization such as letter from the group."

In response to the RFE, the petitioner submitted a letter from the [REDACTED] confirming that the [REDACTED] is in good standing and entitled to the Federal tax exemption. The petitioner also submitted printouts from the [REDACTED] website demonstrating that the petitioning church is included in its list of congregations, and the [REDACTED] is listed as one of its presbyteries. Additionally, the petitioner submitted a document indicating that the petitioning church holds a loan from the [REDACTED]

On March 12, 2013, the director denied the petition, finding that the petitioner failed to establish that it qualifies as a bona fide nonprofit religious organization in the United States. The director noted that the IRS determination letter submitted by the petitioner indicated a tax identification number other than that relating to the petitioning organization.

On appeal, counsel for the petitioner asserts that the petitioner does not need to establish that it holds its own determination letter as it has demonstrated that it is under a valid group exemption.

The record before the director included a determination letter from the IRS confirming that the [REDACTED] holds a group exemption (submitted with the I-360 petition), a letter from the [REDACTED] confirming that the [REDACTED] is entitled to the group exemption (submitted in response to the RFE), and a letter from the Atlantic [REDACTED] confirming that the petitioning organization is one of its members and covered by the exemption (submitted with the petition). The petitioner also submitted printouts from the [REDACTED] website showing the petitioning church's listing as one of its congregations. This evidence is sufficient to establish that the petitioner is "a religious organization that is recognized as tax-exempt under a group tax-exemption" according to 8 C.F.R. § 204.5(m)(8)(ii). Accordingly, the director's findings on this issue will be withdrawn.

The above discussion indicates that the petitioner has overcome the only stated basis for denial of the petition.

However, review of the record shows additional grounds of eligibility that have not been established. The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial 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).

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 continuously for at least the two-year period immediately preceding the filing of the petition. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two-year period immediately preceding June 12, 2012. The regulation at 8 C.F.R. § 204.5(m)(4) also sets forth the requirements for an acceptable break in the continuity of an alien's religious work as follows:

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...

The 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:

- (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.

On the Form I-360 petition and an accompanying addendum, the petitioner indicated that the beneficiary worked as a minister for the [REDACTED] from March 2009 to July 2011, and as a minister for the petitioning church from December 2011 to the present.

The petitioner submitted evidence of compensation from the petitioning church in the form of copies of paychecks and payroll records, along with bank records of deposits by the beneficiary in corresponding amounts for the months of December 2011 through March 2012. The petitioner also submitted uncertified copies of the beneficiary's Form 1040 tax returns for the years 2009, 2010, and 2011, indicating annual gross income of \$34,004, \$24,843, and \$18,217 respectively. An accompanying Form 1099-MISC for 2009 indicates that the beneficiary's income for that year came from the [REDACTED]. The petitioner did not submit evidence to establish the source of the beneficiary's income during 2010 or 2011.

In a letter responding to the October 22, 2012 RFE, counsel for the petitioner stated the following regarding the beneficiary's work history during the qualifying period:

Note that the five month sabbatical period from July 2011 to December 2011 was forced by pending period of non-immigrant visa petition on USCIS. During the period, Rev. [REDACTED] had been regular member of the petitioning church but had not worked without USCIS authorization to do so.

Work History of Rev. [REDACTED] as of June 12, 2012

10/2005~09/2008: Worked as a minister for [REDACTED]

03/2009~07/2011: Worked as a minister for [REDACTED]

12/2011~Present: Worked as a minister for [REDACTED]

Although counsel refers to the break in the beneficiary's employment as a "sabbatical," the petitioner has not established that the period from July to December of 2011 qualifies as an acceptable break under 8 C.F.R. § 204.5(m)(4). One of the requirements of that regulation is that "[t]he alien was still employed as a religious worker." See 8 C.F.R. § 204.5(m)(4)(a). The petitioner and counsel have indicated that the beneficiary was not employed by either the petitioner or the Korean Presbyterian Church of Fayetteville during the period in question.

Further, the petitioner has not established that the beneficiary was engaged in qualifying religious work preceding the acknowledged break in employment. The petitioner asserts that the beneficiary was employed as a minister at the [REDACTED] from March 2009 through July 2011, but has not submitted sufficient evidence to support that assertion. 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)). Although the petitioner submitted a Form 1099-MISC demonstrating that the beneficiary was employed by the [REDACTED] during 2009, the petitioner has not submitted evidence to show that the beneficiary was employed by that organization during the qualifying period.

Additionally, the USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the

USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The AAO will remand the petition in order for the director to determine whether the petitioner has satisfied the regulatory requirements at 8 C.F.R. § 204.5(m) as discussed above.

The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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).

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