



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 19 2014 OFFICE: CALIFORNIA SERVICE CENTER

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. 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, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The Director, California Service Center, denied the petition and certified the decision to the AAO for review. The AAO again remanded the matter for further consideration and the director again denied the petition. The matter is now before the AAO on certification from the director. The AAO will affirm the denial of 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 senior pastor/overseer. The director 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.

On certification, the petitioner submits a brief from counsel and additional evidence.

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)(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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed on May 6, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work in lawful immigration 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:

- (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.

According to the Form I-360 petition and evidence in the record, the beneficiary entered the United States on January 22, 2003, in B-2 nonimmigrant visitor status and subsequently held R-1 nonimmigrant status authorizing his employment with the petitioner from November 4, 2003 to November 4, 2006. The regulation at 8 C.F.R. § 214.1(e) states that aliens in B-2 nonimmigrant visitor status "may not engage in any employment."

In a December 18, 2003 letter accompanying the petition, the petitioner stated:

For the past two years [the beneficiary] was the [redacted] planting churches in United Kingdom, Germany, Holland and United States of

America in the Bronx New York where he is currently, the [REDACTED] the church.

The petitioner submitted a "Ministerial Ordination Certificate" issued to the beneficiary on January 14, 2003, by [REDACTED]

On April 11, 2005, USCIS issued a Request for Evidence (RFE). In an April 20, 2005 letter responding to the RFE, the petitioner stated:

From May 1999 to January 2003, [the beneficiary] was a permanent staff member of [REDACTED] as stated previously. This Ministry is an affiliate of [REDACTED], at who's [sic] invitation, [the beneficiary] came to the United States.

Since his Arrival he has continued as [REDACTED]

In January 2003 he was ordained to take charge of the [REDACTED]

The petitioner submitted an April 18, 2005 letter from [REDACTED] asserting that the beneficiary "was employed full time by our organization," and that he had worked "for 3 years 7 months." The letter stated that the beneficiary was hired "on the 3rd of May, 1999 as the Music Pastor of the Church and [he] was ordained 14th January, 2003."

On December 28, 2005, the Director, Vermont Service Center, denied the petition. The director found that the petitioner failed to submit a description of the beneficiary's past duties or schedule to establish the qualifying nature of his work during the two-year period preceding the filing of the petition. The director also noted that the April 18, 2005 letter from [REDACTED] stated that the beneficiary was employed as a "Music Pastor," while the petitioner's December 18, 2003 letter asserted that he had worked as "International Missions Director."

The petitioner filed an appeal on January 20, 2006. In an accompanying letter, dated January 9, 2006, the petitioner asserted that the beneficiary was employed full-time as a music pastor from May 3, 1999, to April 9, 2001, and thereafter as a "Missions Director" until his ordination. The petitioner listed the beneficiary's purported duties in each of those positions.

On January 26, 2009, the AAO remanded the petition for consideration under new regulations that took effect in November 2008. On October 6, 2011, the Director, California Service Center, denied the petition, finding that the petitioner failed to submit evidence requested in a July 23, 2010 RFE, and certified the decision to the AAO for review. The AAO remanded the matter on May 16, 2012, for consideration of evidence submitted by the petitioner on certification and to determine whether

the petitioner established that the beneficiary had the requisite two years of qualifying work experience immediately preceding the filing of the petition.

In a July 11, 2012, RFE, the director requested additional evidence regarding the beneficiary's work history during the two-year qualifying period. The notice specifically instructed the petitioner to submit experience letters, written by an authorized official from the location at which the experience was gained, providing detailed information about the beneficiary's schedule and the work performed. The petitioner was also instructed to submit evidence of compensation received, an explanation for any break in employment, and, if the experience was gained in the United States, evidence that the beneficiary was authorized to accept employment.

In a letter dated September 12, 2012, the petitioner stated:

[I]n our organizational Ecclesiastical order a Pastor must serve for about 2 to 3 years of proving ministry before he or she is ordain [sic] to become a Reverend. [The beneficiary] served the ministry in that capacity before he was ordained. Though his ordination was on January 14, 2003 he was a Lay Pastor of the Music Department.

The petitioner submitted a letter from [REDACTED] dated August 10, 2012, which again asserted that it had employed the beneficiary in a full-time position:

[REDACTED] employed [the beneficiary] on the 3rd of May 1999 as the Music Pastor of the Church and after serving his probation period required by the church, he was ordained as a Reverend on 14th January, 2003.

[The beneficiary] is a dedicated man of God who has the passion for God's work. His sincerity, honesty and hard work for 3 years 7 months earned him the reputation, experience and recommendation to our Sister Church in New York to be their Pastor.

No further information or evidence was provided regarding the beneficiary's duties, schedule, or compensation during the two-year qualifying period immediately preceding the filing of the petition.

On July 26, 2013, the director again denied the petition. The director found that the petitioner failed to submit any evidence of compensation for work performed abroad or in the United States by the beneficiary during the qualifying period. Regarding the beneficiary's employment abroad, the director noted that the petitioner had not submitted any documentary evidence of such employment apart from its own assertions and those of [REDACTED]. With regard to the beneficiary's employment in the United States during the qualifying period, the director stated that "[t]he beneficiary was not authorized to work for the petitioner, or any other organization, until November 04, 2003 – almost nine (9) months after entering the United States." Accordingly, the director found that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

On certification, counsel for the petitioner asserts that the beneficiary's employment with the petitioner "was voluntary until he was put legally on the payroll," and that "[t]he organization in Ghana was paying his salary until the R-1 was approved; therefore the Beneficiary was not working illegally." In a letter dated August 17, 2013, the petitioner states

The beneficiary, [REDACTED] had worked Three years Seven months with our sister church ([REDACTED]) from May 3, 1999 to January 14, 2003 although his appointment letter states with effect from January 1, 2003. He continued working here in our New York branch voluntarily from January 2003, and was receiving salary from Ghana branch until December 2003 due to his legal status. From January 2004 until June 2004, the beneficiary received monetary donations every third week of the month. From November 2002 to January 2003 was his transition to the United States. Attached are the appointment letter as a Resident Pastor in New York branch and paystubs of [the beneficiary] from January 2002 to December 2003.

The petitioner submits a January 20, 2003 letter from [REDACTED] to the beneficiary, informing him of his appointment, effective January 1, 2003, to be resident pastor "of the New York (USA) branch of the Ministry." The letter states: "The terms and conditions of your service are provided in a separate document, which will be made available to you in due time." The petitioner also submits signed, monthly "Payslips" from [REDACTED], for the months of January 2002 through December 2003.

Regarding the petitioner's claim that the beneficiary worked as a volunteer in the United States for a portion of the qualifying period and was supported by [REDACTED] such work is not considered to be qualifying experience under the current regulations for special immigrant religious workers. 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). The regulation at 8 C.F.R. § 204.5(m)(11) specifically requires that the alien's prior experience have been compensated either by salaried or non-salaried compensation (such as room and board), but can also include self-support under limited conditions. In elaborating on this issue in the final rule, USCIS determined that the sole instances where aliens may be uncompensated are those aliens "participating in an established, traditionally non-compensated, missionary program." See 73 Fed. Reg. at 72278. See also 8 C.F.R. § 214.2(r)(11)(ii). The petitioner has neither claimed nor established that the beneficiary was participating in such a program. Accordingly, any time the beneficiary may have spent in the United States "working" as a volunteer for the petitioner cannot be considered qualifying employment. Further, as a B-2 nonimmigrant visitor, the beneficiary lacked employment authorization during the period in question, so any work performed for the petitioner would not be considered qualifying experience under 8 C.F.R § 204.5(m)(11) for this additional reason.

To the extent that the petitioner asserts that [REDACTED] employed the beneficiary until December 2003, this assertion directly contradicts the repeated statements by [REDACTED] in the letters of April 18, 2005 and August 10, 2012, that it employed the beneficiary from May 1999 for a period of three years and seven months. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regardless, the petitioner has not submitted sufficient evidence of continuous, compensated employment during the qualifying period under 8 C.F.R. § 204.5(m)(11). That regulation requires IRS documentation of any salaried compensation for employment in the United States and “comparable evidence” of religious work performed outside of the United States. The petitioner asserts that the beneficiary received monthly payments from [REDACTED] from January 2002 until December 2003. However, the submitted paystubs from [REDACTED] are not verifiable documentary evidence as they consist only of the assertions of that organization. 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)). Further, the petitioner submitted no documentary evidence of compensation for the period from January 2004 to May 2004.

Additionally, regarding the beneficiary’s employment abroad during the qualifying period with [REDACTED] the petitioner has not established the qualifying nature of the beneficiary’s position. As discussed previously, [REDACTED] has consistently indicated that the beneficiary served as a non-ordained music pastor, while the petitioner asserts that the beneficiary served first as a “Lay Pastor of the Music Department” and later as a “Missions Director” prior to his ordination. The regulation at 8 C.F.R. § 204.5(m)(5) includes the following definitions:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister. ...

Religious occupation means 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.

As the petitioner has stated that the beneficiary was not yet ordained or fully qualified as a minister according to the denomination's standards, neither the position of music pastor or missions director meets the definition of a minister under the regulations. Further, [REDACTED] has not provided sufficient details regarding the beneficiary's duties to establish that they primarily related to a religious function and the petitioner has not provided evidence to establish that either position is recognized as a religious occupation within the denomination.

For the reasons discussed above, the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

As an additional matter, the petitioner has not established that it will employ the beneficiary as a special immigrant religious worker. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. The AAO conducts appellate review on a de novo basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The regulation at 8 C.F.R. § 204.5(m)(6) states that "[a] petition must be filed as provided in the petition form instructions either by the alien or by his or her prospective United States employer." Further, the regulation at 8 C.F.R. § 204.5(m)(7) requires an authorized official of the prospective employer to complete, sign and date an attestation providing specific information about the employer, the alien, and the terms of proposed employment.

The Form I-360 petition was filed by [REDACTED]. In the December 18, 2003 letter accompanying the petition, the petitioner stated that it currently employed the beneficiary as "Resident/Senior Pastor of the church," and that his "proposed employment will not be different from what he is doing currently."

Following the AAO's January 26, 2009 remand for consideration under new regulations, the beneficiary filed a Form I-485, Application to Register Permanent Residence or Adjust Status, based on his pending Form I-360 petition. In the accompanying Form G-325A, Biographic Information, dated August 21, 2009, the beneficiary stated that he was employed by the petitioner as senior pastor from November 2003 to November 2006, and by [REDACTED] New York, as senior pastor from November 2006 to the present. The beneficiary submitted an August 18, 2009 letter from the petitioner, stating that "although [the beneficiary] is currently not in our employ, we still wish to hire [him] as our Senior Pastor and we will do so upon the approval of the I-360 form."

In an employer attestation signed on August 18, 2010, the chairman of the petitioning church attested to the petitioner's intent to employ the beneficiary as a full-time "Senior Pastor/Missions Director" for compensation of \$2,600 per month. The petitioner stated that the beneficiary would work only at the petitioner's address. The petitioner submitted a July 1, 2010 letter from the petitioner to the beneficiary, informing him of his appointment as "Senior Pastor/Missions Director" of the petitioning church, effective September 1, 2010.

In response to the director's July 11, 2012 RFE, the petitioner submitted a new employer attestation, dated September 19, 2012, attesting to the petitioner's intent to employ the beneficiary as a full-time "Senior Pastor/Overseer" for \$2,100 biweekly. However, the petitioner indicated that the beneficiary would be working both at the petitioning church and at [REDACTED]. The petitioner also submitted a September 18, 2012 letter from [REDACTED], stating:

[The beneficiary] has worked with us for the past 8 years and currently receives a bi-weekly salary of \$2,050.00. Attached are copies of the past 3 years of W-2 and the pay stub of the last 3 months.

Although [the beneficiary] is employed by [REDACTED] he often offers assistance to [REDACTED] which is our affiliate church in the Bronx New York.

The petitioner did not address the contradiction between the beneficiary's purported appointment as the petitioner's senior pastor/missions director on September 1, 2010, and [REDACTED] statement that the beneficiary "offers assistance" to the petitioner, but "is employed by" [REDACTED]. The petitioner submitted evidence of the beneficiary's compensation from [REDACTED] but did not submit any evidence to indicate that the beneficiary had been compensated by the petitioner since September 1, 2010. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless

the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

The petitioner has not resolved inconsistencies in the record regarding the beneficiary's current and prospective employment. The petitioner asserted in September 19, 2012 attestation that the beneficiary will be employed and compensated by both the petitioning church and [REDACTED]. However, this represents a material change from the terms of employment set forth at the time of filing. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Further, the beneficiary's proposed employment by HOLM is not supported by a valid Form I-360 petition and an employer attestation signed by an authorized official of the prospective employer as required by regulation.

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, that burden has not been met.

ORDER: The director's decision is affirmed. The petition is denied.