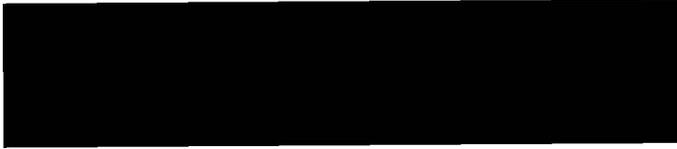




U.S. Citizenship  
and Immigration  
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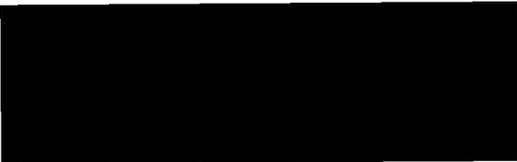


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 25 2009  
WAC 07 188 54492

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Jerry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner is a member church of the Redeemed Christian Church of God, Worldwide, based in Lagos, Nigeria. 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 pastor of the denomination's church in Manchester, New Hampshire. The director determined that the petitioner had submitted conflicting evidence, which called the petitioner's overall credibility into question.

The record contains no response to the certified 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 October 31, 2009, 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 October 31, 2009, 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 beneficiary to have been working in a qualifying religious occupation or vocation, 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 petitioner filed the petition on June 4, 2007.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads, in part:

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.

On the Form I-360, where asked to list the beneficiary's current nonimmigrant status and the expiration date of that status, the petitioner left both lines blank.

On May 12, 2009, the director instructed the petitioner to submit various documentary evidence required by new regulations published in November 2008. Among other things, the director instructed the petitioner to submit Internal Revenue Service (IRS) documentation of the beneficiary's compensation, and financial documentation relating to the petitioning organization. The director noted that the beneficiary's qualifying past employment "must have been authorized under United States immigration law."

In response, the petitioner submitted copies of IRS Form W-2 Wage and Tax Statements, claiming that the petitioner paid the beneficiary \$18,000 (plus \$9,200.00 for housing) each year from 2005 to 2007, and \$17,900.03 (plus \$9,300.00 for housing) in 2008.

The petitioner submitted copies of financial statements for 2004 through 2006. Each statement identifies paid employees, lists each employee's salary, and specifies the total salaries paid for the year. The reports do not identify the beneficiary, and the total amounts paid out in salaries match the sums of the individual salaries listed. The director found that this contradicts the petitioner's claim to have employed the beneficiary. The petitioner, however, also submitted copies of processed checks, showing payments to the beneficiary.

Also, the financial reports specifically pertain to the Redeemed Christian Church of God International Chapel, Bronx, New York, which is not the petitioning entity. This explains why the reports did not list the beneficiary as an employee. It raises, however, the question of why the petitioner in Massachusetts would submit financial statements from a church in New York as evidence of the financial status of the church in Massachusetts. Because the New York church

claims only two salaried employees, clearly the New York church is not responsible for the finances of a large number of churches including the petitioner.

Because questions remained about the petitioner's finances and employment of the beneficiary, the director issued a request for evidence on July 8, 2009. Among other things, the petitioner requested a Social Security record from the Social Security Administration (to verify reporting of the beneficiary's wages) and copies of immigration and passport documents relating to the beneficiary's admission to the United States and immigration status. The director also requested copies of the petitioner's IRS Form W-3 Transmittal of Wage and Tax Statements for the preceding four years.

The new regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to complete a detailed attestation. Because the attestation is printed on the latest version of Form I-360, the petitioner submitted a completed Form I-360, including the required attestation. On the form, the petitioner again left blank the section labeled "Current Nonimmigrant Status." Instead of listing an expiration date, the petitioner wrote "Pending I-360," which is neither an expiration date nor a nonimmigrant status. The filing of a petition does not confer lawful status or establish past lawful status.

The beneficiary's passport shows that the beneficiary entered the United States on February 2, 2004 as a B-1/B-2 nonimmigrant visitor, a status that does not authorize employment. He left the United States and re-entered as a B-2 nonimmigrant on December 14, 2004. The petitioner did not submit any immigration documents to show that the beneficiary has ever been authorized to work for the petitioner.

The petitioner did not submit copies of the requested Social Security reports or IRS Forms W-3, nor did the petitioner explain its failure to submit those documents.

The director denied the petition on September 28, 2009, stating that the petitioner submitted inconsistent and incomplete evidence. As required by 8 C.F.R. § 103.4(b)(2), the director allowed the petitioner 30 days in which to submit a brief in response to the certified decision. The permitted time has elapsed, and the record contains no further correspondence from the petitioner or from counsel.

The record supports the director's narrative of events. Because the petitioner has proven to be either unwilling or unable to submit required evidence in this proceeding, we affirm the director's finding that the petitioner has not established that the petition can be approved. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

Mentioned, but not emphasized, in the director's decision is the requirement that the beneficiary's past employment in the United States must have been authorized under United States immigration law. The petitioner has had numerous opportunities to document the beneficiary's nonimmigrant status and establish that the beneficiary possessed the required employment authorization. The petitioner has usually declined to provide any information at all. On those occasions when the petitioner did provide information about the beneficiary's status, that information does not indicate

that the beneficiary held a qualifying nonimmigrant status. The beneficiary apparently last entered the United States as a B-2 visitor, which would not permit him to work for the petitioner, and the record contains no evidence that he ever changed to a qualifying status, even though the director specifically instructed the petitioner to submit such evidence. The petition cannot be approved without proof of the beneficiary's employment authorization.

While we do not agree with every specific aspect of the director's findings, we affirm the director's core finding that the petitioner has failed to provide requested and required evidence. The petitioner has not contested this finding.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will affirm the director's uncontested decision.

**ORDER:** The director's decision of September 28, 2009 is affirmed. The petition is denied.