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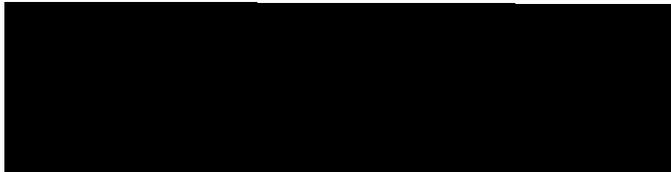
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



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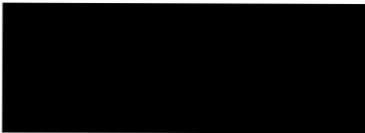


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 26 2009
WAC 07 193 53376

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).

Perry Rhew
Perry 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 to the director for consideration under new regulations. The director again denied the petition and certified the decision to the AAO for review. The AAO will affirm the denial of the petition.

The petitioner is a ministry under the United Pentecostal Church International. 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 Christian education director at Haven of Hope in New Haven, Connecticut. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious occupation.

In response to the notice of certification, the petitioner submits a brief from counsel.

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 first basis for denial concerns the beneficiary's claimed past experience. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(11) reads:

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.

The petitioner filed the petition on June 14, 2007. In a letter accompanying the initial filing, Rev. [REDACTED] of the petitioning entity and Senior Pastor of Haven of Hope, stated that the beneficiary "has worked in a religious occupation for the last two years as a Religious Instructor and missionary since 1998 in The Learning Centre School, as part of the United Pentecostal Church in Botswana. His salary was paid by The Learning Centre." The petitioner's initial submission included no evidence from church authorities in Botswana.

The petitioner indicated that the beneficiary entered the United States on January 18, 2007, five months before the petition's filing date, as a B-1 nonimmigrant visitor for business. There is no evidence that the beneficiary left the United States before the filing date. If the beneficiary was in the United States during most of the first half of 2007, then he was clearly unable to work in Botswana at that time. The petitioner, in the initial submission, did not explain what the beneficiary was doing during early 2007.

On August 7, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit "evidence of the beneficiary's work history for the two year period prior to the filing date." The director specified: "Each experience letter must be written by an authorized official from the specific

location at which the experience was gained. The petitioner may only write an experience letter for the experience gained at the petitioner's location."

In response, counsel asserted: "[REDACTED] was the Senior Pastor at the United Pentecostal Church of Botswana," which would give [REDACTED] authority to attest to the beneficiary's employment in Botswana. Other materials in the record indicate that [REDACTED] worked in Botswana for 14 years before returning to the United States to establish Hope Haven. The petitioner submitted an unsigned "Payroll Summary," indicating that the Learning Centre paid the beneficiary gross pay of 36,000 in 2005 and 41,700 in 2006. The document did not specify whether these figures are in United States dollars or pula (the currency of Botswana). The petitioner did not claim that the beneficiary has worked in the United States, or show any 2007 earnings by the beneficiary from any source.

Denying the petition on December 7, 2007, the director found the evidence of the beneficiary's compensation to be insufficient for 2005-2006, and nonexistent for 2007. On appeal from that decision, counsel stated: "The Petitioner has previously submitted substantive evidence . . . in the form of a signed letter by the Petitioner that references the various financial documents that illustrate the connection between the payment of the Beneficiary by the Petitioner." Counsel indicated that a brief and/or further evidence would follow within 30 days. On February 5, 2008, counsel requested a further 60-day extension to obtain the necessary documents from Botswana and other locations. When counsel submitted the brief on April 7, 2008, it included copies of previous submissions, but no newly submitted documentation.

In the brief, counsel argued that the petitioner had established eligibility by submitting "the beneficiary's resume, the Petitioner's Vice President's letter, the Profit & Loss Statement and the Payroll Summary for 2005 and 2006, the two years immediately preceding the filing of the Petition." Leaving aside, for now, the question of whether the named documents are sufficient, the two years immediately preceding the filing of the petition were not calendar years 2005 and 2006 as counsel claimed. Rather, the two-year qualifying period ended June 14, 2007, when the petitioner filed the petition. That qualifying period includes the first five and a half months of 2007, a period of time that the petitioner had made no attempt to address.

As required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), USCIS issued new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). In keeping with this requirement, the AAO remanded the petition to the director on December 16, 2008, to give the petitioner an opportunity to meet the new requirements.

On February 4, 2009, the director notified the petitioner of the new requirements, and stated that the petition would be denied if the petitioner did not meet those requirements. In response, counsel stated

that the beneficiary “was never employed in the United States. And evidence concerning the qualifying experience was already submitted to satisfy 8 C.F.R. 204.5(m)(11).” Counsel did not explain how the prior evidence satisfies 8 C.F.R. § 204.5(m)(11), which requires (among other things) documentation of past salaries paid.

On July 10, 2009, the director again denied the petition and certified the decision to the AAO. The director found that the petitioner had not submitted documentary evidence of the beneficiary’s past compensation. The director also found that the petitioner submitted no evidence of employment during the first half of 2007, and that the petitioner had acknowledged that the beneficiary was not employed during that time.

In response to the certified denial, counsel maintains that the payroll summaries are sufficient evidence that the beneficiary received payment. 8 C.F.R. § 204.5(m)(11)(i) requires the petitioner to “submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns,” or “comparable evidence” to show employment outside the United States. The petitioner has not shown that the payroll summary, prepared after the fact and submitted without primary documentation, is comparable to IRS records of compensation. We note that the payroll summary refers to “Permits” and “With[h]olding,” which imply the existence of government records of the beneficiary’s salary payments. The petitioner has not provided copies of these records.

With respect to the early months of 2007, counsel states:

The Beneficiary was in the United States on a B-1 visa. . . . The Beneficiary was not authorized to work in the United States and was traveling the United States with the church or living with church members. During January 2007 and June 2007, the Beneficiary was living on the advanced salary he received in December 2006 from [the petitioner] for his time in the United States through June 2007.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner had never before claimed that the beneficiary received an “advanced salary” in 2006 to cover his expenses in the United States. We cannot find that the director erred by failing to consider a claim that the petitioner had, to that point, never made.

The previously submitted payroll summary indicated that, in 2006, the beneficiary received 39,600 plus 2,100 for “leave.” These figures represent an increase of less than 16% from the 36,000 listed for 2005. The amount earmarked as “leave” amounts to just 5.3% of his annual compensation. We therefore reject any claim that the payroll summary reflects a six-month advance of the beneficiary’s salary. We agree with the director’s finding that the petitioner submitted insufficient documentation of the beneficiary’s compensation for 2005/2006, and none at all for 2007.

Furthermore, 8 C.F.R. § 204.5(m)(4) requires the beneficiary to have been working continuously for at least the two-year period immediately preceding the filing of the petition. The petitioner does not

claim that the beneficiary performed qualifying religious work in the United States in 2007. Indeed, the record shows that the beneficiary was in the United States for most of 2007, which means he cannot have been working in Botswana during that time, and the petitioner acknowledges that the beneficiary did not work in the United States. There is, therefore, an admitted, significant interruption in the continuity of the beneficiary's work.

The above regulation states that 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 petitioner, however, has not shown or even claimed that the beneficiary meets all three of these requirements. The break was clearly less than two years, but the other provisions are in serious doubt. The petitioner claims that the beneficiary was still employed as a religious worker during his time in the United States, but the record contains no evidence to support this claim. The beneficiary's own résumé, indicating that he remains an employee of the church in Botswana, amounts to a self-serving claim rather than evidence to support that claim. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)). The petitioner has also not demonstrated that the nature of the break was for further religious training or for sabbatical. The vague claim that the beneficiary was "traveling . . . with the Church" does not suffice.

For the above reasons, we agree with the director's finding that the petitioner has not shown that the beneficiary meets the statutory two-year experience requirement.

The second and final basis for denial relates to whether the beneficiary's work is a religious occupation. 8 C.F.R. § 204.5(m)(5) defines "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.

A job description submitted with the initial filing of the petition listed several "Overall Responsibilities" of the proffered position, such as: "Pray for the staff, children and families at Haven of Hope Church"; "Coordinate, oversee and evaluate all children's ministries"; "Develop and work within the annual budget"; "Ensure that children are being taught and acquainted with the word of God"; and "Oversee and provide pastoral care for the children of our church." The section labeled "Specific Responsibilities" reads, in its entirety: "The responsibilities cover three categories: Children, Ministry Leaders & Parents."

In the August 2007 RFE, the director requested "a **detailed description** of the work to be done" (emphasis in original) as well as evidence that the petitioner's denomination recognizes the beneficiary's position as a religious occupation. In response, the petitioner resubmitted the same job description provided earlier.

The director's December 2007 denial notice did not address the nature of the beneficiary's intended employment, and the issue did not surface in correspondence to or from the petitioner during 2008. In the July 2009 certified denial notice, the director found: "The petitioner has not submitted evidence to prove that the beneficiary's position is a traditionally permanent and salaried occupation within the religious organization. In this instance, the duties of the occupation do not have religious significance and embody the tenets of that particular religious denomination." In response, counsel observes that the previously submitted list of the beneficiary's job duties includes terms of religious significance.

8 C.F.R. § 103.3(a)(1)(i) requires the director to explain in writing the specific reasons for denial. In this instance, the director did not discuss the petitioner's evidence or explain why that evidence is deficient. The director simply quoted from the regulations and stated that the petitioner did not meet the requirements. This cannot suffice as a basis for denial, particularly when the petitioner's evidence, on its face, appears to contradict the director's findings.

We withdraw the director's finding regarding the nature of the beneficiary's intended work, because that finding is unacceptably vague and not based on any meaningful discussion of the evidence. The petition will remain denied, however, because of the director's correct finding relating to the beneficiary's past work and compensation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Because the petitioner has not met that burden, the petition cannot be approved.

ORDER: The director's decision of July 10, 2009 is affirmed. The petition is denied.