

identifying data deleted to
prevent unauthorized access
to this information

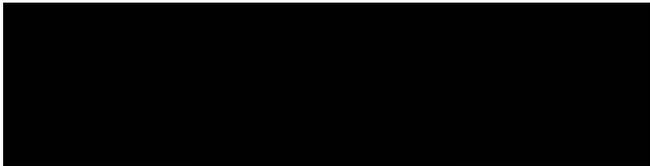
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

61



FILE:

WAC 07 193 53692

Office: CALIFORNIA SERVICE CENTER

Date:

OCT 26 2009

IN RE:

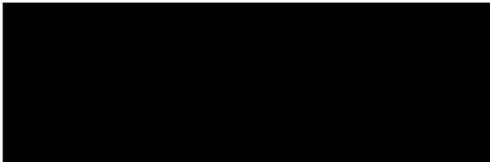
Petitioner:

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:

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 public relations and worship coordinator at Haven of Hope in New Haven, Connecticut. The director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious occupation.

The director issued the certified decision on May 5, 2009. As required by 8 C.F.R. § 103.4(a)(2), the director allowed the petitioner 30 days to submit a brief in response to the notice of certification. More than five months later, the record contains no further submission from the petitioner or counsel. The AAO therefore considers the record to be complete and will issue its decision based on the record as it now stands.

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 sole stated basis for denial relates to whether the beneficiary's work is a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) regulation at 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.

The petitioner filed the petition on June 14, 2007. A job description submitted with the initial filing of the petition listed three "Specific Responsibilities":

Website

Develop initial website that is relevant for today; Promote website throughout community; Link church departments in such a way that information is updated monthly on individual website pages; Design new site annually; Website should be an evangelism tool and a resource for those who visit; Website should be php based and include scripts for newsletters, email lists, wake up calls for Sunday morning service and any other innovative ideas.

Sound (Lighting)

Oversee the recruiting and training of volunteers to setup, operate, and tear down sound equipment; Organize transportation of equipment to all events; Ensure that equipment is stored in a safe and efficient manner; Maintain quality of sound in services that is moderate enough not to offend but progressive enough to welcome and that promotes an atmosphere of worship; Research and suggest lighting options both for church services and theatrical presentations.

Advertising

Develop and institute advertising campaigns using your graphic design skills and knowledge of such; Advertising should include internet, paper, and signboards but is not limited to these; Develop contacts in the area for advertising opportunities and use them.

The job description also listed several more general “Overall Responsibilities” of the proffered position, such as: “Pray for the staff, children and families at Haven of Hope Church”; “Coordinate all announcements and promotions of program”; “Develop and work within the annual budget”; and “Evaluate rooms and class sizes for best use of media in facility space.”

In a letter accompanying the initial filing, [REDACTED] of the petitioning entity and Senior Pastor of Haven of Hope, stated: “The position [of] Director of Media Ministries requires experience in the church, with volunteers and recruiting adults and be gifted in ‘communication, administration, people skills and teaching.’”

On August 7, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit “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 denied the petition on December 7, 2007, for reasons unrelated to the nature of the beneficiary’s intended occupation. The AAO remanded the petition on December 11, 2008, for consideration under new regulations that took effect in November 2008.

On December 29, 2008, the director issued a second request for evidence, again instructing the petitioner to “[s]ubmit evidence to establish that the occupation relates primarily to a traditional religious function that is recognized as a religious occupation within the denomination.” In response, the petitioner submitted an affidavit from [REDACTED] who stated: “A Worship Coordinator is not merely an administrative position. While there are administrative aspects to the position, the main focus and duties of this position . . . derive from the need to spiritually encourage membership within our church.” He stated that the position “is defined and recognized by the governing body of the denomination,” but he submitted no evidence (such as a published definition of the position from the governing body of the denomination) to support this claim.

On May 5, 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 to support the claim that the denomination recognizes the beneficiary’s position as a religious occupation. As noted previously, the record contains no response to the certified decision.

We agree with the director’s finding that the petitioner has not shown the beneficiary’s position to be primarily religious in nature. The duties initially listed as the beneficiary’s “Specific Responsibilities” are, at best, tangentially religious, focusing more on web design and sound and lighting equipment. The petitioner’s more general “Overall Responsibilities” contain more religious references, but this second list consists more of guidelines than specific job duties.

The petitioner has not shown that the beneficiary’s duties primarily relate to a traditional religious function and are recognized as a religious occupation within the denomination, as required by 8 C.F.R. § 204.5(m)(5)(A), or that the beneficiary’s duties are primarily related to, and clearly

involve, inculcating or carrying out the religious creed and beliefs of the denomination, as required by 8 C.F.R. § 204.5(m)(5)(B). We therefore affirm the director's certified denial of the petition.

Review of the record reveals another reason why we cannot approve the petition. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The 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.

Here, the petitioner has not claimed that the beneficiary worked in the United States during the two year period. The petitioner claims that the beneficiary worked in Botswana during that time, but the record does not contain documentary evidence comparable to IRS documentation.

On Form I-360, 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. A photocopy of a Form I-94 Arrival and Departure Record, however, shows the date January 17, 2007,

expiring February 17, 2007. 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 she 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.

The beneficiary's *curriculum vitae*, submitted with the initial filing, shows the following work experience:

Development Bank of the Philippines Office Trainee . . . in charge [of] the reconciliation and tallying of accounts, encoding, preparation of printouts and other clerical works.	May 1994 – June 1994
Livelihood Resource Center Director (Tutorial Services)	November 1997 – October 1998
The Learning Center School Assisting Preschool and Primary Teachers	October 1998 – November 2003
The Learning Center School Computer Instructor/Computer Maintenance Technician	December 2003 – present

The beneficiary also listed “Other Responsibilities” with “UPCG Religious Ministry”:

Organize and conduct a Christian Musical Presentation/choir [no dates given]	
Christian Praise/Worship Singer	1997 – present
Sunday School Teacher	1998 – 2000
Gaborone Praise Group Leader	2002 – present
Church Web/Media Designing	2003 – present
Local Church Board Member	2004
Christian Choir Assistant Director	2005 – present

The beneficiary's own account of her employment indicates that her primary employment during the qualifying period was as a “Computer Instructor/Computer Maintenance Technician” at The Learning Center School. The record indicates that the school is run by the United Pentecostal Church, but this does not mean that the position was religious in nature.

In the August 2007 RFE, the director instructed the petitioner to submit “evidence of the beneficiary's work history for the two year period prior to the filing date.” In response, the petitioner submitted an unsigned “Payroll Summary,” indicating that the Learning Centre paid the beneficiary gross pay of 57,600 pears year in 2005 and 2006, along with 5,280 in leave for each of the two years. 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. Nearly a quarter of the two-year qualifying period fell during 2007.

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.

We find 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 she cannot have been working in Botswana during that time. The beneficiary’s B-1 nonimmigrant status would not have authorized her to work for a United States employer, and the record does not show that the beneficiary had any lawful immigration status at all after February 17, 2007. The record, therefore, shows a significant interruption in the continuity of the beneficiary’s legally authorized 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 that the beneficiary meets all three of these requirements. The break was clearly less than two years, but nothing in the record shows that the beneficiary meets the other requirements.

We will affirm the denial for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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