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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

WAC 07 210 50205

Office: CALIFORNIA SERVICE CENTER

Date: OCT 28 2009

IN RE:

Petitioner:

Beneficiary:

PETITION:

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
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 self-petitioner seeks classification 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 rabbi. The director determined that the petitioner had not established that he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that he was qualified for the position, or that he had received a qualifying job offer.

On appeal, counsel asserted that the United States Citizenship and Immigration Services (USCIS) interpretation that the qualifying work must be paid violates the intent of the regulations, and that the petitioner submitted sufficient evidence to show that he is ordained as a rabbi and qualified to perform the duties of the proffered position. Counsel further asserted that the term contract offered to the petitioner does not mean or imply that the contractual relationship would end on that date. The petitioner submitted additional documentation in support of the appeal. Counsel reiterated these arguments on certification.

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 regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that he 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 petition was filed on July 6, 2007. Therefore, the petitioner must establish that he was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

In a June 14, 2007 letter from [REDACTED], president of the petitioner's prospective employer, stated that the petitioner had been employed with the organization since September 1, 2006. [REDACTED] also stated that the petitioner worked as a full-time rabbi at Congregation Anshey Sfarad from November 1, 2003 to November 2005, and volunteered with Kehilat Yaakov Congregation from November 2005 through August 2006. Mr. [REDACTED] stated that the petitioner was employed under a two-year contract to perform rabbinical duties consisting of:

2. The Rabbi shall be the Chazan and Ba'al Kore (Torah Reader) and spiritual leader in addition to the other duties specified in [the employment] agreement.
3. The Rabbi shall conduct and supervise the religious services and ceremonies of the congregation in accordance with the existing practices of the congregation.
4. The Rabbi shall deliver a Drasha (sermon) every Shabbat and on all major Jewish holidays.
5. The Rabbi shall Develop and be responsible for a regular schedule of adult education and children education such as Sunday school or after school programs.
6. The Rabbi shall be responsible for our Bar Mitzvah Tutoring program. He shall set the religious and education qualifications and standards for persons wishing to become Bar Mitzvah or Bat Mitzvah.
7. The Rabbi shall be the final arbitrator of the Kashruth of the synagogue's kitchen and the preparation for all food prepared or served in the synagogue.
8. The Rabbi shall be a member of the Boar of Rabbis of Northern California.
9. The Rabbi shall conduct life cycle events such as Bar Mitzvah celebrations, marriages, conversions, and funerals. Additionally he may counsel congregation members of Jewish law, visit sick members and provide marriage counseling for members of the congregation.

The petitioner submitted no documentation from [REDACTED] his previous employer, that outlined his work with that organization. However, he submitted a copy of an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, reflecting that [REDACTED] paid him \$26,000 in wages and \$16,000 for a parsonage during the year 2005.

The petitioner submitted letters dated April 19, 2007 from [REDACTED] and [REDACTED] the treasurer and president of his prospective employer, in which they confirmed that the petitioner worked as a “full time volunteer at our congregation from November 2005 until August 2006. [The petitioner] didn’t receive any monetary compensation for those months.” Neither [REDACTED] nor [REDACTED] indicated that the petitioner was compensated in other than monetary terms. The petitioner provided a May 1, 2007 letter from his wife, in which she stated that she brought money with her from Israel, and that when her husband lost his job in November 2005, “[t]he money that I brought from Israel helped us a lot. I used that [sic] my own money to pay bills and other expenses when my husband was without a job.” The petitioner submitted an April 26, 2007 letter from the Jewish Family and Children’s Services, indicating that the petitioner was a client with the organization from February 22, 2006 through September 14, 2006, and that he received food vouchers totaling \$390 from February to April 2006, and rent vouchers totaling \$1,600 in March and April 2006. The petitioner also submitted an IRS Form W-2 indicating that [REDACTED] paid him \$4,400 in wages and \$7,600 for a parsonage in 2006, copies of his IRS Form 1040, U.S. Individual Income Tax Return, for 2005 and 2006, and copies of canceled checks indicating that [REDACTED] paid him as follows:

October 3, 2006	\$3,000	September Salary
October 31, 2006	\$3,000	October Salary
December 1, 2006	\$3,000	November Salary
December 31, 2006	\$1,900	December Parsonage
December 31, 2006	\$1,011.85	December Salary
February 2, 2007	\$1,900	January Parsonage
February 2, 2007	\$1,011.85	January Salary
March 2, 2007	\$1,900	February Parsonage
March 2, 2007	\$1,100	February Salary

On September 10, 2007, the director notified the petitioner of her intention to deny the petition because the petitioner had not established that he worked in qualifying full time employment for the two years immediately preceding the filing of the visa petition. The director instructed the petitioner that for any work performed on a volunteer basis, to “provide evidence to show how [he] supported himself . . . during the two-year period.”

In response, the petitioner submitted a copy of an employment contract between himself and Congregation Anshey Sfarid. The contract was for a two-year period beginning November 1, 2003 for the petitioner to serve as the organization’s Rabbi with a monthly salary of \$4,200. The petitioner also submitted a copy of a June 16, 2005 letter from [REDACTED] of Congregation Anshey Sfarid, confirming the petitioner’s full-time employment under a contract which began November 1, 2003 and which was to terminate on October 31, 2005.

The petitioner also resubmitted copies of the letters from his wife, the Jewish Family and Children’s Services, and the president and treasurer of Kehilat Yaakov Congregation, and copies of the petitioner’s IRS Forms W-2 for the years 2005 and 2006, copies of his IRS Forms 1040,

and copies of canceled checks issued to the petitioner from October 2006 to March 2007. The petitioner also submitted copies of his IRS Tax Transcripts for the years 2005 and 2006.

The director determined that the petitioner's volunteer work did not satisfy the two years continuous work requirement of the statute and regulation, and denied the petition on November 16, 2007.

On appeal, counsel asserted:

Although the AAO has stated in the past that the position must be salaried, this by definition is inconsistent with and excludes the religious occupations listed in the regulations – such as missionaries, who do not customarily get paid for their religious work. There is no specific language in the act or in the regulations which indicates that the position must be a traditionally full-time salaried position as it cannot be so – consider missionaries situation. [Emphasis in the original.]

The regulation recognizes those vocations, such as nuns or monks, who usually are not paid directly for their services but are provided with housing, food and necessities as part of their service. In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that, while continuously and primarily engaged in the traditional religious occupation, he was self-sufficient or that his financial well being was clearly maintained by means other than secular employment. Despite counsel's arguments to the contrary, missionaries do not customarily live in an unsalaried environment such as that of a monk or nun, and therefore must establish, for purpose of this employment-based visa petition, that he or she was not engaged in secular employment for his or her financial support. The same is true for the petitioner's position as a rabbi. Rabbis traditionally do not live in unsalaried environments similar to that of a monk, and therefore the petitioner must establish that if he was not paid for his services, he was not engaged in secular employment.

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.

The petitioner's wife stated that she brought funds with her from Israel that the family used when the petitioner was not paid for his services with [REDACTED]. The petitioner provided no evidence of these funds, such as audited financial statements, bank or brokerage statements. Further, the petitioner provided no documentation to establish that the funds were available for the family's use after he lost his position in November 2005. Additionally, other evidence in the record indicates that whatever funds the family had did not adequately cover the family's expenses, as they were forced to rely on assistance from the Jewish Family and Children's Services from February to April 2006.

In response to the director's Notice of Intent to Deny (NOID) issued on remand, the petitioner stated that he had worked in a full-time position with Kehilat Yaakov Congregation since October 2006 after a period of volunteer service beginning in June 2006. The petitioner stated that during his volunteer period, his wife supported him, that he got a Hebrew Free Loan (HFL), that he received a grant from the Jewish Family and Children's Services, and that he lived on his savings. The petitioner provided copies of his bank statements for the period November 5, 2008 through February 3, 2009, and copies of his IRS Form W-2 for the year 2008. However, as these documents are dated after the filing date of the petition, they do not serve to establish that the petitioner's continuous employment prior to the filing of the visa petition. The 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) and (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner submitted a copy of a loan receipt from the HFL, indicating that he borrowed \$2,000. The receipt is not dated; however, it indicated that the petitioner was due to start repaying the loan three months after he procured employment. He also submitted a copy of his IRS Form W-2 for 2007, indicating that [REDACTED] paid him \$13,200 in wages and a parsonage allowance of \$22,800.

As noted by the director, without documentary evidence of compensation for his services, the petitioner provided insufficient evidence to establish that he worked continuously from November 1, 2005 through August 31, 2006. The petitioner submitted general statements from

the president and treasurer of [REDACTED], in which they claimed that he worked as a full-time volunteer with the congregation from November 2005 through August 2006. The petitioner also submitted a November 7, 2007 letter from [REDACTED], who confirmed that the petitioner was a rabbi at [REDACTED] and that he “regularly performs Torah study sessions at our congregation.” However, the petitioner provided no documentary evidence to support these statements. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, in response to the director’s NOID issued on remand, the petitioner stated that he began working in a full-time salaried position for [REDACTED] in October 2006 rather than in August 2006 as initially alleged. 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).

Counsel asserted on appeal that the USCIS interpretation that qualifying work experience must be paid employment violates the intent of the regulation and “violates a Constitutional principle of separation of church and state. USCIS cannot dictate that religious workers such as missionaries, rabbis or any other ministers have to be paid in order to show work experience.”

First, USCIS does not *require* the religious worker to establish work experience through paid employment. However, paid employment provides excellent evidence of qualifying work experience. Furthermore, if the qualifying work is as a volunteer, the petitioner must establish that he was self-sufficient or that his financial well being was clearly maintained by means other than secular employment. 8 C.F.R. § 204.5(m)(11)(iii); *Matter of B*, 3 I&N Dec. 162 (C.O. 1948). Second, while the determination of an individual’s status or duties within a religious organization is not under USCIS’s purview, the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests with USCIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

While the documentation submitted indicates that the petitioner was involved with [REDACTED], the evidence presented does not establish that the petitioner was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The second issue on appeal is whether the petitioner has established that he is qualified for the proffered position.

The regulation at 8 C.F.R. § 204.5(m)(5) defines minister as one 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.

The regulation at 8 C.F.R. § 204.5(m)(9) provides that if the alien is a minister, the petitioner must provide evidence of the following:

(i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

With the petition, the petitioner submitted a copy of a "Certificate of Rabbinical Ordination," dated June 18, 1997, certifying that the petitioner had completed his rabbinical studies and was entitled to bear the designation of "Rabbi of the Jewish People." The petitioner also submitted a copy of a September 17, 2003 letter from [REDACTED] Rabbinical College

in Jerusalem, Israel, certifying that the beneficiary had graduated from the college after attending from October 1989 through February 1996.

In a September 10, 2007 NOID , the director instructed the petitioner to submit evidence that he had been ordained and the requirements for ordination and to “clarify whether the beneficiary has authorization to conduct religious worship and perform other services usually performed by members of the clergy, in addition to religious worship and services performed by all.” In response, the petitioner resubmitted copies of the letter from [REDACTED] Rabbinical College and a copy of his “Certificate of Rabbinical Ordination.” On appeal, counsel again reiterated that the petitioner had graduated from Rabbinical College and was fully ordained.

The evidence sufficiently establishes that the petitioner is qualified for the proffered position, and we withdraw the director’s determination to the contrary.

The third issue on appeal is whether the petitioner has established that he has been extended a qualifying job offer.

The regulation at 8 C.F.R. § 204.5(m)(7) requires an attestation from the petitioner’s prospective employer, specifically attesting to, among other things:

- (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien’s proposed daily duties;
- (vii) That the alien will be employed at least 35 hours per week; [and]
- (viii) The specific location(s) of the proposed employment.

The petitioner submitted a copy of his employment contract, which indicated that he was being employed for a period of two years beginning on September 1, 2006 and ending on August 31, 2008, and that he would be paid a basic salary of \$36,000 per year in monthly installments of \$3,000. The contract made provisions for termination of the contract prior to its termination date but made no provisions for extensions of the contract period.

The director determined that, as the contract offered only temporary employment, the petitioner had not received a qualifying job offer from his prospective employer.

On appeal, counsel stated:

USCIS was not satisfied with the fact that the employment contract was entered for 2 years and had an end date. Most contracts when entered into have a beginning and an end date – such as employment contracts and leases. However, this by no means implies that a contract is over. It usually means that a contract is

extended, renegotiated, or a relationship continues beyond the expiration date on the same terms. Be it known that even with an employment contract, employment in the United States is at will, meaning that employee or employer can terminate the relationship at any time without cause, but not due to illegal discrimination.

On appeal, the petitioner submitted a copy of a December 2, 2007 contract that began on September 1, 2008 and ends on August 31, 2013. In response to the director's February 4, 2009 NOID, the petitioner's prospective employer attested that the petitioner would be employed in a full-time salaried position and provided another copy of the December 2, 2007 employment contract. Accordingly, we find that the petitioner has sufficiently established that he has received a qualifying job offer. Nonetheless, as the petitioner has not established that he worked in qualifying religious work for two full years immediately preceding the filing of the petition, the petition may not be approved.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.