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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 09 127 51208 Office: CALIFORNIA SERVICE CENTER Date: **APR 06 2010**

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:

SELF-REPRESENTED

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).

M. Deadrack
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Part 1 of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, identifies [REDACTED] as the petitioner. Review of the petition form, however, indicates that the alien is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any church official, but by the alien beneficiary himself. Thus, the alien, and not the church, has taken responsibility for the content of the petition.

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 youth and young adult counselor. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

The petitioner submits a letter and additional documentation in support of the appeal.

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 issue presented is whether the petitioner has established that the proffered position qualifies as that of 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.

On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner described the duties of the proffered position as “provide individual counseling to at risk young and adult people in order to assist in revolving [sic] some of the personal, spiritual or relationship issues.”

In its March 20, 2009 letter in support of the petition, the senior pastor of the prospective employer, [REDACTED] stated:

[The petitioner’s] experience and knowledge of the Tongan culture and language is a powerful influence in making daily relationships more pleasant and rewarding in handling issues concerning youth and young adults.

[As] the youth and young adult counselor[, the petitioner] is crucial to the development of the youth and young adult programs. His leadership is invaluable and has become a great asset to the church.

In denying the petition, the director stated:

The record lacks any documentation establishing that the position is recognized as a religious occupation related to a traditional function in this denomination. The petitioner did not submit By-laws, letters from authorized officials of the religious organization in the United States, or other documentary evidence indicating that the duties of this position are directly related to the religious creed of the denomination, and that the position is defined and recognized by the governing

body of the denomination, and that the position is a traditionally a permanent, salaried occupation within the denomination.

On appeal, the [REDACTED] states:

The Counselor plays an important role in the church. Having been born and raised in our home country, the parents of the youth and young adults compromise themselves and their children. This compromise is between our native culture and the traditional religious lifestyles, along with the lifestyles of the United States. The youth and young adult counselor allows its members the opportunity to address this short fall. This is done by demonstrating the traditional religious benefit the youth and young adult play in preventing youth suicide, depression and self harm.

In support of his statement, [REDACTED] indicates that he was enclosing the church's by-laws. However, the document submitted is a copy of what appears to be a title insurance policy. The petitioner has submitted no documentation to establish that the position of youth and young adult counselor relates to a traditional religious function and is recognized as a religious occupation within its denomination, and that the duties are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of its denomination.

Accordingly, the petitioner has not established that the position of youth and young adult counselor is a religious occupation within the meaning of the regulation.

Beyond the decision of the director, the petitioner has not established that his prospective employer is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

Bona fide non-profit religious organization in the United States means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code [IRC] of 1986, subsequent amendment or equivalent sections of prior enactments of the [IRC], and possessing a currently valid determination letter from the IRS [Internal Revenue Service] confirming such exemption.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the [IRS] establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the [IRC of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner submitted no documentation to establish that the tax-exempt status of the prospective employing organization with the petition or on appeal. Accordingly, he has failed to establish that his prospective employer a bona fide nonprofit religious organization for purposes of this visa petition.

Additionally, the petitioner has failed to establish that he worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, 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 prior religious work need not correspond precisely to the type of work to be performed. 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. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that he worked 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 March 30, 2009. Accordingly, the petitioner must establish that he was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The 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 submitted no documentation of his prior employment. Further, on the Form I-360 petition, the petitioner stated he first entered the United States on November 28, 2000 and that his current nonimmigrant status was a "multiple visa" that expired on September 12, 2005. The petitioner submitted a copy of his visa, indicating that he was approved for an F-1 nonimmigrant student visa on September 13, 2000 with an expiration date of September 12, 2005. The petitioner also provided a copy of his Form I-94, Departure Record, indicating that he entered the United States in an F-1 status on September 28, 2000. Aliens in an F-1 status are authorized to work only under limited circumstances. See 8 C.F.R. § 214.2(f)(9)-(11). The petitioner submitted no documentation to establish that he was authorized to work for church under the terms of his F-1 visa. Further, the petitioner submitted no documentation to establish when he completed his schooling and therefore that he was present in the United States in an authorized status subsequent to that date. Accordingly, as the petitioner was not in an authorized work status during the qualifying period, any work he performed in the United States interrupts the continuity of his work experience for the purpose of this visa petition. 8 C.F.R. § 204.5(m)(4).

The petitioner has failed to establish that he worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The petitioner has also failed to establish that he will be employed in full time employment or how the prospective employer intends to compensate him.

The regulation requires that the alien must be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position. 8 C.F.R. § 204.5(m)(2). Additionally, the regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The Form I-360 petition indicates that the proffered position is "voluntary work" and that "once in a while the church will make donations to" those in non-salaried positions.

The petitioner provided a copy of the prospective employer's January 2009 brokerage statement and an incomplete and unsigned Form I-864, Affidavit of Support Under Section 213A of the Act, apparently from the pastor of the prospective employer. The petitioner provided no

documentation of any financial support that he received and no documentation of any specific compensation provided to him for his duties as a youth and young adult counselor.

Although the prospective employer attested that the petitioner will not be engaged in secular employment and that it “will provide salaried and/or non-salaried compensation,” the petitioner provided no documentation to support this statement. Accordingly, the petitioner has failed to establish that he will be engaged in full-time, compensated employment or how his prospective employer intends to compensate him.

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 burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.