

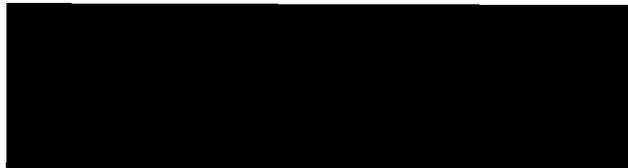
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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



**U.S. Citizenship
and Immigration
Services**



C₁

FILE: WAC 08 242 51368 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).

U. D. Rhew
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.

The petitioner is a church. 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 an associate pastor. The director determined that the record does not establish that the petition had been signed by an authorized official of the petitioning organization and that the petitioner had submitted the required attestation signed by an authorized representative of the prospective employer.

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 issues presented on appeal are whether the petitioner and the required attestation were signed by an authorized official of the organization. The regulation at 8 C.F.R. § 204.5(m)(6) provides that “[a] petition must be filed as provided in the petition form instructions either by the alien or by his or her prospective United States employer.” The regulation at 8 C.F.R. § 204.5(m)(7) provides the following:

Attestation. An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS [U.S. Citizenship and Immigration Services] and submit it along with the petition. If the alien is a self-petitioner and is also an authorized official of the prospective employer, the self-petitioner may sign the attestation. The prospective employer must specifically attest to all of the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;

(ii) The number of members of the prospective employer's organization;

(iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;

(iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;

(v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;

(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;

(viii) The specific location(s) of the proposed employment;

(ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;

(x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;

(xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and

(xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

Part 1 of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed on September 10, 2008, indicates that the petitioner is [REDACTED]. Part 3 of the form indicates that the beneficiary is [REDACTED], and the signature in Part 9 is that of [REDACTED].¹ In support of the petition, the petitioner submitted a September 3, 2008 letter signed by [REDACTED] who identified herself as president of the petitioning organization and attested that the beneficiary held membership in the Assemblies of God, had been working as a pastor for over two years, and would be employed in the petitioning organization as an associate pastor with a starting compensation of \$30,000 per year. The petitioner also provided a copy of a February 23, 2007 "Consumer's Certificate of Exemption" issued by the Florida Department of Revenue, exempting the petitioner from payment of Florida sales and use tax. The petitioner submitted no other documentation with the petition.

In a request for evidence (RFE) dated January 16, 2009, the director instructed the petitioner to submit additional documentation to establish the beneficiary's eligibility under this visa classification, including the attestation required by the above-cited regulation. In response, the petitioner submitted a February 25, 2009 letter from [REDACTED], who identified herself again as the president and senior pastor of the organization. While [REDACTED] addressed all of the other issues listed in the RFE, she did not provide the attestation required by the regulation.

In denying the petition, the director stated that the petition had been signed by the beneficiary and that the record "did not include evidence to conclude that the petition was filed by the petitioner" or that the "petition [was] submitted with the initial attestation [that was signed] by a legitimate or authorized official of the religious organization."

On appeal, the petitioner submits another letter from [REDACTED] in which she disputed the director's conclusion that the beneficiary signed the petition and stated that she was an authorized official of the petitioning organization. She also again attested to the beneficiary's membership in the denomination, his prior work experience and the job duties and compensation for the proffered position.

¹ The typed name in the signature block is "[REDACTED]" however, we accept this as a typographical error.

We withdraw the director's finding that the petition was filed by the beneficiary and that the record does not reflect that the petition was filed by an authorized official of the organization. The petition does not contain the beneficiary's signature in any part of the form. [REDACTED] consistently identified herself as president of the organization and the articles of incorporation submitted in response to the RFE also indicate that she is the president and registered agent for the organization.

Nonetheless, the petitioner failed to submit the attestation required by 8 C.F.R. § 204.5(m)(7). As discussed previously, the petitioner failed to provide the attestation as instructed in the RFE and did not submit it on appeal. Accordingly, the petitioner has failed to provide the attestation required by the regulation.

Beyond the decision of the director, the petitioner has failed to establish the beneficiary 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 the beneficiary had been working 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 September 10, 2008. Accordingly, the petitioner must establish that the beneficiary had been 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 [Internal Revenue Service] 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 a February 19, 2009 letter, accompanied by an English translation, from [REDACTED] in Costa Rica, who certified that the beneficiary was named as a pastor of one of their churches in May 2005. In a separate letter of the same date, [REDACTED] stated that the treasurer of the church was authorized to pay the beneficiary a salary every 15 days and that currently, the beneficiary was paid C275,000.00, which was deposited into the beneficiary's bank account. The petitioner provided copies of what the petitioner describes as the beneficiary's bank statements. However, these documents are not accompanied by English translations as required by 8 C.F.R. § 103.2(b)(3). Additionally, the amounts on the documents do not readily indicate a payment of C275,000.00 on a biweekly or monthly basis. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

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

The petitioner has also failed to establish how it intends to compensate the beneficiary.

The petitioner stated that the beneficiary would be compensated at the rate of \$30,000 annually. The petitioner submitted copies of IRS Forms W-2, reflecting wages paid to ██████████ in the amount of \$20,200 in 2007 and \$19,200 in 2009. An IRS Form W-2 also indicates that the petitioner paid another employee \$4,410 in 2008. In her letter of February 25, 2009 responding to the RFE, ██████████ stated that the petitioner had never had an associate pastor “but anticipates the funds will be available to meet this [sic] salary needs.”

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 petitioner submitted none of the documentation required by the above-cited regulation and has therefore failed to establish how it intends to compensate the beneficiary.

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.