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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**

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER
WAC 07 091 52473

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. 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.

Part 1 of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, identifies the [REDACTED] as the petitioner. Review of the petition form, however, indicates that the alien beneficiary 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 pastor. The director determined that the petitioner had not established that he had been a member of the same denomination continuously for the two years immediately preceding the filing of the visa petition, that he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, and how the prospective employer intended to compensate him. Additionally, the petitioner failed to provide the attestation required by the regulation.

The petitioner provides no additional documentation 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 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 first issue on certification is whether the petitioner has established that he has been a member of the same religious denomination for two full years immediately preceding the filing of the visa petition. The regulation at 8 C.F.R. § 204.5(m)(1) requires the petitioner to show he has been a member of a religious denomination that has a bona fide non-profit religious organization in the United States. The petition was filed on February 7, 2007. Therefore, the petitioner must establish that he was a member of the same denomination since that date.

In support of the petition, the petitioner submitted a copy of a "Certificate of Membership" from the [REDACTED] reflecting that he had become a member of [REDACTED] on April 8, 2001, and a "pastoral ministry" license from [REDACTED] dated March 1, 2002. The license indicated that it had been renewed every year since that date. A May 15, 2001 "Statement of Understanding" signed by the petitioner, indicated that [REDACTED] intended to appoint the petitioner as pastor [REDACTED] effective on July 1, 2001. A partial copy of the June 2002 Official Journal and Year Book of the West Ohio Annual Conference of [REDACTED] identified the petitioner as a "student local pastor" and a "full member [of an] other denomination." A 2006-2007 directory also identified the petitioner as a full member of another denomination. None of the documentation identified the "other denomination" to which the petitioner allegedly belonged. A January 31, 2007 letter from [REDACTED] certified that the petitioner had been pastor of the church since July 1, 2001.

In a request for evidence (RFE) dated April 4, 2007, the director requested clarification of the petitioner's denomination and the connection between the prospective employer "and any other church the beneficiary has worked at between 2-7-2005 and 2-7-2007." The petitioner did not directly respond to the director's RFE; instead, the prospective employer submitted a new Form I-360 filed on behalf of the petitioner [USCIS receipt number WAC 07 206 54012].¹ In addition to previously submitted documentation, other documentation included a February 26, 1996 ordination certificate issued to the petitioner by [REDACTED] and a copy of his January 7, 1989 marriage certificate, indicating that he was married in [REDACTED]. The documentation also included a June 7, 2007 letter from the senior pastor [REDACTED], verifying that the petitioner was a member of that organization.

In denying the petition, the director stated that the evidence revealed that the petitioner was of the Baptist denomination rather than Methodist, and therefore he had failed to establish that he was a member of the same religious denomination as that of his prospective employer. On

¹ The director denied this petition on October 27, 2008. There was no appeal of the director's decision.

appeal, the petitioner resubmitted previously submitted documentation, but submitted no additional documentation in response to the director's Notice of Intent to Deny ((NOID)) issued on remand or on certification.

Nonetheless, we find that the petitioner has submitted sufficient documentation to establish that he was a member of the same religious denomination as his prospective employer for two full years prior to the filing of the visa petition. The petitioner submitted several documents indicating that he was a member and served as a pastor within the Methodist denomination. While his license indicated that he was of another denomination, it is clear that his credentials were accepted and he served within the Methodist Church. We therefore withdraw the director's determination to the contrary.

The second issue is whether the petitioner has established that he worked continuously in a qualifying religious occupation or vocation for the two years immediately preceding the filing of the visa petition.

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 February 7, 2007. Therefore, the petitioner must establish that he was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted a January 31, 2007 statement from [REDACTED] certifying that he had been pastor of the church since July 2001, and that he was paid a "basic salary" of \$8,320 and a housing allowance of "6,000," that he was provided with an "Accountable reimbursement plan" of \$1,500 and "ARP" of \$1,500. The petitioner also submitted a partial copy of his 2005 IRS Form 1040X, Amended U.S. Individual Income Tax Return. The petitioner provided no other documentation to establish that he was employed as a religious worker during the qualifying period.

The U.S. Citizenship and Immigration Service (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.

Documentation provided with petition WAC 07 206 54012 included a copy of a "2006 Response Form A" for the prospective employer, which contained a total budget amount but no itemized budget items. The petitioner also submitted a copy of a "Church Charge Conference Compensation Report for 2007 on which [REDACTED] reported that it would pay clergy compensation of \$8,320, a housing allowance of \$6,000 and additional pastoral support of \$1,500. On appeal, the petitioner submitted additional documentation in the form of his uncertified U.S. income tax returns for 2004, 2005 and 2006. A page from the petitioner's 2005 return indicates that he received wages of \$7,520 from his work as a minister and \$2,000 as a parsonage allowance. The 2006 return indicates that he received \$2,320 in wages and \$6,000 as a parsonage allowance. The 2004 return, which is outside of the qualifying period, shows no income from a ministry. We note that the petitioner was admitted into the United States in a J-1 nonimmigrant exchange visitor status on February 5, 2001 and was subsequently approved for asylum status on July 10, 2008. The petitioner admitted working in the library of his seminary while in school. The petitioner did not respond to the NOID issued on remand and submitted no additional documentation on certification.

The petitioner failed to submit copies of his IRS Form W-2 or certified copies of his tax returns. He has failed to provide the documentation required by the above-cited regulation and therefore has failed to establish that he worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The third issue is whether the petitioner has established how his prospective employer intends to compensate him.

In a January 31, 2007 statement, the prospective employer indicated that the petitioner would receive a salary of \$8,320 in addition to a housing allowance of \$6,000. 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's uncertified federal tax returns do not establish that the prospective employer has paid him the proffered salary in the past. In 2005, the petitioner reported wages as a minister of \$7,520 and a parsonage allowance of \$2,000. In 2006, he reported wages of \$2,320 and a parsonage allowance of \$6,000. While the record contains documentation indicating the prospective employer's budget for 2007, the petitioner provided no itemized budget that would reflect monies set aside for various expenses as required by the regulation.

The petitioner has not submitted the documentation required by the above-cited regulation. Accordingly, he has failed to establish how his prospective employer intends to compensate him.

The petitioner also failed to provide the attestation required by the regulation at 8 C.F.R. § 204.5(m)(7), which requires that:

An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS 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.

The AAO will affirm the certified 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 28, 2009 is affirmed.