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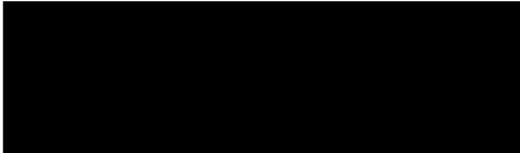
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

C1



FILE: WAC 08 194 51363 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).

A handwritten signature in black ink, appearing to read "Perry 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 a "minister of communication." The director determined that the petitioner had not established that the position qualifies as that of a religious occupation, how it intends to compensate the beneficiary, and that it is a bona fide nonprofit religious organization.

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 first 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.

The petitioner submitted no documentation or explanation of the proffered position with the petition. In a February 11, 2009 request for evidence (RFE), the director instructed the petitioner to:

Provide a **detailed description** of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

In an undated letter submitted in response, the petitioner, through the assistant pastor, [REDACTED], stated:

[The beneficiary] has video taped hundreds of hours of Bible teaching on location in Bible lands by our Senior Pastor Together they are attempting to produce a teaching curriculum in the Bible and the Christian faith [He] brings ten years of filming and the technical ability, along with the necessary equipment to this project. His knowledge of the Bible lands and his work with our Pastor makes him indispensable to the project.

His duties will be in the area of video curriculum. He will continue to work with the Senior Pastor and will spend most of his time editing the productions of the church - adding the many hours of footage from the Bible lands to the presentations both live and video.

On appeal, the petitioner states:

Though the title is not a traditional one, the role is preparation of Biblical materials that require BOTH technical knowledge of broadcast media and an acute attention to Biblical accuracy and detail according to our traditional understanding of the Bible's contents. The applicants are needed for Sunday morning broadcast. 8 C.F.R. 204.5 (m)(2) provides for religious broadcasters to be admitted under the request, and the applicants are specifically needed for this purpose. [Emphasis omitted.]

The petitioner references an October 19, 2007 job offer, which it submits for the first time on appeal, that informs the beneficiary and his wife that: "We require your specific training in technology and your Biblical knowledge to help us broadcast the Bible teaching programs of [the petitioning organization], as well as editing and producing the Bible teaching materials for our religious programming." The petitioner also informed the beneficiary and his wife that their responsibilities would include video taping and editing the Sunday services for broadcast and the "development of the Great Commission Bible Institute's video curriculum."

We note first that the petitioner made no reference to taping Sunday services for broadcast in its response to the RFE. Second, the petitioner quotes an outdated instruction in support for its assertion that a "broadcaster" would "be admitted under the request."

The new USCIS regulations, promulgated on November 26, 2008, did not specifically include broadcasters as an example of a religious occupation. Rather, as discussed above, the regulation at 8 C.F.R. § 204.5(m)(5) provides that the duties of a religious occupation must primarily relate to a traditional religious function, be recognized as a religious occupation within the denomination, and must primarily relate to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

The petitioner has submitted no documentation that the filming and editing of videos are primarily related to, and clearly involve inculcating and carrying out the petitioner's religious creed and beliefs. In its letter submitted in response to the RFE, the petitioner stated that the beneficiary's major attributes for the position included his knowledge of biblical lands, his technical expertise and his equipment. Therefore, even if the proffered position was that of a broadcaster, the petitioner has not established that the position of minister of communication is a traditional religious function in its organization and that it clearly involves inculcating and carrying out the religious creed and beliefs of the organization.

The petitioner has failed to establish that the proffered position is a religious occupation within the meaning of the regulation.

The second issue is whether the petitioner established how it intends to compensate the beneficiary.

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 no documentation with the petition. In response to the director's RFE, the petitioner stated that it would provide the beneficiary with an annual compensation totaling \$36,000, to include a salary of \$18,000 and housing worth \$18,000. The petitioner submitted no other documentation to establish how it intends to compensate the beneficiary, either in response to the RFE or on appeal. The petitioner has therefore failed to establish how it intends to compensate the beneficiary.

The third issue is whether the petitioner has established that it is a bona fide nonprofit religious organization.

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

Tax-exempt organization means an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the IRC [Internal Revenue Code] of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

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 [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 its tax-exempt status with the petition. In response to the RFE, the petitioner submitted a copy of a March 20, 2009 letter from the IRS, advising it of its employer identification number (EIN) and a copy of a March 26, 2008 "Consumer's Certificate of Exemption" issued by the Florida State Department of Revenue.

On appeal, the petitioner again cites to the outdated regulation at 8 C.F.R. § 204.5(m)(2), and argues that it has submitted documentation required by the regulation. The petitioner also asserts that: "In your letter you stated that it was necessary to 'establish eligibility for exemption' not to supply a certificate." However, in her RFE, the director specifically advised the petitioner that new regulations were promulgated on November 26, 2008 and that to comply with those regulations, the petitioner must submit evidence that it qualifies as a nonprofit religious organization "in the form of The Internal Revenue Service – IRS 501(c)(3) Tax Exempt Certification."

The petitioner failed to submit the requested documentation. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner has therefore failed to establish that it is a bona fide nonprofit religious organization as required by the regulation at 8 C.F.R. § 204.5(m)(8).

Beyond the decision of the director, the petitioner has not established that 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 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 July 2, 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 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 provided no documentation of the beneficiary's qualifying work experience with the petition, in response to the RFE or on appeal. Accordingly, it 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 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 petition will be denied 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.