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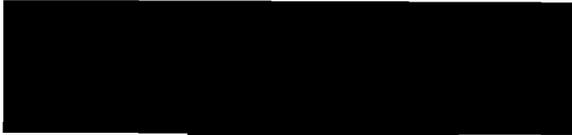
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 08 2010
WAC 08 158 51108

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, 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 pastor. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

On appeal, the petitioner states that the beneficiary has been senior pastor of the petitioning organization since 2004 and receives a love offering and housing from the church until he receives approval to work in the United States. 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 beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The U.S. Citizenship and Immigration Services (USCIS) 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 May 12, 2008. Accordingly, the petitioner must establish that the beneficiary 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.

In its January 4, 2008 letter submitted in support of the petition, the petitioner stated that the beneficiary "has been working as the full-time Pastor in the Church since its inception in October 2003. Compensation has only been love offering and housing waiting for INS permit for work to pay him a salary." The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary entered the United States on August 19, 1993 in an F-1 nonimmigrant student status. The petitioner submitted no other documentation with the petition to establish the beneficiary's qualifying work experience.

In a request for evidence (RFE) dated November 6, 2008, the director requested additional documentation from the petitioner, including documentation that the beneficiary had maintained his F-1 status, a copy of Form I-688 indicating that the beneficiary was authorized to work in the United States, and documentation reflecting that the beneficiary was compensated for his work with the petitioning organization.

The petitioner provided no additional documentation or information regarding the beneficiary's immigration status with its December 28, 2008 response. The petitioner stated that the senior pastor was its only paid employee and submitted a copy of IRS Form W-3, Transmittal of Wage and Tax Statements, for 2008 indicating that it paid wages of \$6,445. The petitioner also submitted copies of processed checks, reflecting that it paid the beneficiary varying amounts for housing, "pulpit" and travel during 2006 through 2008.

The director denied the petition, determining that the petitioner had not established that the beneficiary was in a lawful immigration status for the two years immediately preceding the filing of the petition, and thus had failed to establish that he worked continuously during the qualifying period.

On appeal, the petitioner states that the beneficiary is not a volunteer and receives a love offering and housing "until he obtains his Work Authorization." In a March 9, 2009 letter, the petitioner stated that the beneficiary "relocated to the USA as a student" in 1993 and received a Doctor of Psychology degree from Biola University in La Mirada, California in 1999. The petitioner submitted no documentation to establish the beneficiary's lawful immigration status during the qualifying period.

The record reflects that the beneficiary entered the United States in 1993 as a student. The petitioner provided no documentation to establish that the beneficiary remained in a student status or that he was authorized to work in the United States during the two years immediately prior to the date the petition was filed. Therefore, the record does not establish the beneficiary was in a lawful immigration status during the qualifying period. Accordingly, any work performed by the beneficiary 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)(7), (11).

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

The director determined that the petitioner had sufficiently established how it intends to compensate the beneficiary. However, we do not concur and withdraw this determination by the director.

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.

In its January 4, 2008 letter, the petitioner stated that the beneficiary would receive an annual salary of \$24,000 plus housing and transportation, and in response to the RFE, that the beneficiary was its only paid employee. The petitioner submitted a copy of its IRS Form W-3, indicating that it reported wages of \$6,445 in 2008. The processed checks reflect that the petitioner paid the beneficiary, for "pulpit," housing, and travel, a total of \$8,800 and \$12,050 in 2008 and 2007, and \$8,200 in 2006, far less than the amount of the proposed salary without the housing and travel allowances. The petitioner also submitted copies of IRS Form 990-PF, Return of Private Foundation, for the years 2007 and 2008, reflecting net assets of \$11,354 and \$11,289, respectively. The IRS Forms 990-PF do not reflect payment of any salaries or wages. Thus, it is not clear from the petitioner's tax statements that it is able to compensate the beneficiary in the amount of a \$24,000 salary plus housing and travel.

Accordingly, the petitioner has failed to establish how it intends to compensate the beneficiary.

Beyond the decision of the director, the petitioner has failed to provide the attestation required by the regulation at 8 C.F.R. § 204.5(m)(7).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.