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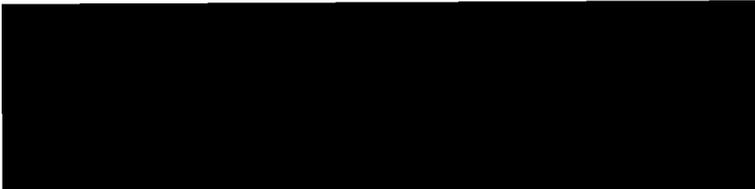
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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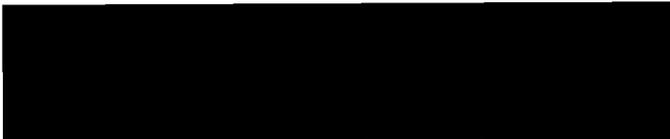
FILE: WAC 08 222 51872 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



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)

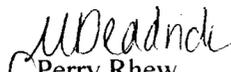
ON BEHALF OF PETITIONER:



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 church office clerk. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

The petitioner submits 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.

In its July 31, 2008 letter submitted in support of the petition, the petitioner stated that the beneficiary had been a member of the petitioning organization for ten years and “was elevated to the rank of a Deacon” in 2005, and that in that position “he provides Spiritual and Social services to the Church and the Community.” The petitioner provided a copy of the beneficiary’s February 26, 2005 certificate of ordination to the deaconate and also stated:

At this time, the Church is offering [the beneficiary] a full time job as a Church Office Clerk. As the Church Clerk, he will be performing duties such as: keeping all church records and he will be teaching the men’s Bible Class.

For his services [he] will be paid four hundred and fifty dollars every week plus transportation expenses.

In a request for evidence (RFE) dated December 17, 2008, the director requested additional information about the proffered position including a detailed description of the work to be done and evidence that the beneficiary had been compensated for his work.

In its response, the petitioner, through its [REDACTED] stated that there were “no paid persons on staff apart from the Pastor” and that:

In the Baptist Faith the office of a Deacon is a divine call. He must be properly equip[ped] in studying the scriptures along with the church’s Covenant and the Articles of Faith. The beneficiary . . . has met these requirements by the Pastor and the Board of Deacons.

The petitioner did not address the duties of the position of church office clerk that it purportedly was offering to the beneficiary. The director denied the petition, finding that the petitioner had not established that the position is recognized as a religious occupation within its denomination.

On appeal, the petitioner initially states that the director “erroneously stated the nature of the job offer,” that the position is “more than that of the church clerk,” and that the beneficiary “would

be primarily performing spiritual and social services to the church and to the community.” In a letter submitted subsequent to the appeal, the petitioner states that “it appears, according to your response, that we were not clear in describing the extent of [the beneficiary’s] job title.” The petitioner then states:

[The beneficiary] will serve on the Home Mission Board . . . as a full time paid Missionary. He will be ministering in the Hospitals and Nursing Homes, visiting the Prisons and Jails, and serving the Elderly and Needy in the Jersey City community in terms of their Spiritual and Social needs.

We note that there was no confusion in the petitioner’s initial description of the job offered to the beneficiary. While the record indicates that the beneficiary was ordained as a deacon with the petitioning organization and possibly served in that role, the proffered position is that of an office clerk. The petitioner described the duties of the church office clerk as keeping all church records and teaching the men’s bible class. Clerical positions are specifically excluded from the definition of religious occupations. 8 C.F.R. § 204.5(m)(5)(C).

On appeal, the petitioner changes the nature and title of the position offered to the beneficiary, now stating that it is a paid missionary position that would include ministering to hospitals, nursing homes, prisons and jails. A petitioner cannot, on appeal, offer a new position to the beneficiary, or materially change a position’s title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a religious worker. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner also asserts on appeal that it is “an independent religious organization and is not governed by an [sic] hierarchical ecclesiastical body.” Nonetheless, the petitioner submitted documentation that it is a member of the National Baptist Convention but provided no documentation that the position of office clerk, even if it clerical positions meet the definition of a religious occupation, was recognized as a religious occupation by the National Baptist Convention.

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

Beyond the decision of the director, the petitioner has not established that the beneficiary worked continuously in a qualifying occupation or vocation 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 August 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 letter submitted with the petition, the petitioner stated that the beneficiary had served as a deacon with the church since 2005, providing "Spiritual and Social services to the Church and the Community." We note that [REDACTED] stated in his January 1, 2009 letter that the petitioner had no paid employees other than himself. The petitioner provided no documentation to establish that the beneficiary worked in any position during the qualifying period.

Additionally, the record reflects that the beneficiary was not in a lawful immigration status during the qualifying period. On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner stated that the beneficiary arrived in the United States on June 13, 1998 for an authorized period of stay until December 12, 1998. The petitioner provided no documentation to establish that the beneficiary was authorized to work in the United States during the two years prior to the filing of the visa petition. 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)(4).

The petitioner has therefore 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.

Additionally, the petitioner has failed to establish how it intends to compensate the beneficiary. The petitioner stated that the beneficiary would receive a weekly salary of \$450. In her RFE, the director instructed the petitioner to provide evidence "to establish the arrangements that have been made, if any, for remuneration for services to be rendered to the" beneficiary. In response, the petitioner submitted copies of its November and December 2008 monthly checking account statements.

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 listed in the above-cited regulation. Therefore it has 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 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.