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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



C<sub>1</sub>

Date: **APR 23 2012** Office: CALIFORNIA SERVICE CENTER



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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*M. Deardorff*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

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 nun at [REDACTED] within the Archdiocese of Washington, D.C. The director determined that the self-petitioner failed to submit the required attestation from an authorized official of her prospective employer and also failed to submit a religious denomination certification from an authorized official of the religious organization.

On appeal, the self-petitioner submits letters from counsel, a new Form I-360 petition signed by an official of the Archdiocese of Washington including a signed Employer Attestation and Religious Denomination Certification, and copies of documents previously submitted with the original Form I-360 petition.

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 regulation at 8 C.F.R. § 204.5(m)(7) requires an authorized official of the prospective employer of an alien seeking religious worker status to complete, sign and date an attestation

providing specific information about the employer, the alien, and the terms of proposed employment. The regulation at 8 C.F.R. § 204.5(m)(7) states that 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 [United States Citizenship and Immigration Services] 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 regulation at 8 C.F.R. § 204.5(m)(8) states in part:

(8) Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

(iii) For a bona fide organization that is affiliated with the religious denomination...

(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. This certification is to be submitted by the petitioner along with the petition.

The self-petitioner filed the petition on March 19, 2010. The Employer Attestation portion of the petition, Part 8 of the Form I-360, was signed by the self-petitioning alien and was only partially completed. In the space provided for one of the questions was written "Please refer to the attached cover letter. All questions in Part 8 are answered." The statement "refer to cover letter" was written in the space for several of the other questions. The Religious Denomination Certification portion of the Form I-360 petition listed [REDACTED] as the employing organization and [REDACTED] as the denomination, but the form did not contain a signature, instead referring to "Exhibit 22." The cover letter referred to in Part 8 was signed only by the self-petitioner's attorney and addressed some, but not all, of the points that the regulation at 8 C.F.R. § 204.5(m)(7) requires. For example, the cover letter did not establish the number of religious worker petitions filed by the self-petitioner's prospective employer, as 8 C.F.R. § 204.5(m)(7)(v) requires. Exhibit 22 was an affidavit signed by the pastor of the church [REDACTED] which asserted that the self-petitioner has worked for that church since July, 2009, without attesting that his church is affiliated with the Roman Catholic denomination.

On July 27, 2010, USCIS issued a Request for Evidence instructing the self-petitioner to submit an employer attestation and a Religious Denomination Certification and advising the self-petitioner on how to obtain these forms. USCIS also stated the following:

**Note: The attestation and the Religious Denomination Certification submitted with the current petition were incomplete please response [sic] to each question on the form. In addition, the beneficiary/self-petitioner is not**

**authorized to sign these forms. The attestation and the Religious Denomination Certification must be signed by an authorized representative of the organization offering this employment (The Archdiocese of Washington, D.C.).**

(Emphasis in original). The notice also included a Request for Evidence regarding the alien's Form I-485 application (submitted concurrently with the Form I-360 petition), instructing the alien to submit a new Form I-693, Report of Medical Examination and Vaccination Record.

In response to this notice, the self-petitioner submitted the Form I-693. No further evidence was submitted and counsel's cover letter made no mention of the requested attestation or Religious Denomination Certification.

On October 4, 2010, the director denied the petition based on the self-petitioner's failure to submit the attestation from an authorized official of her prospective employer and the Religious Denomination Certification from an authorized official of the religious organization.

On appeal, the self-petitioner submits a new Form I-360 petition listing the Archdiocese of Washington as the petitioner. The petition is signed by an official of the Archdiocese of Washington and includes a completed employer attestation and a completed Religious Denomination Certification both also signed by that official.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Counsel has not alleged nor demonstrated any error on the part of the director. Consequently, the appeal will be dismissed.

The AAO further notes that the self-petitioner's attempt to insert the Archdiocese as the petitioner in this matter after the filing of the Form I-360 constitutes a material change to the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). 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).

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.