

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

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

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 30 2010**  
WAC 09 237 51001

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:  
[REDACTED]

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

The petitioner is a Pentecostal Christian church of the Assemblies of God denomination. 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 music minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition, or that the beneficiary's intended position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel and new witness statements.

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 under consideration regards the beneficiary's past experience. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

*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 filed the petition on August 31, 2009, using the May 29, 2009 revision of Form I-360. [REDACTED] the petitioner's senior pastor, signed the petition form on August 28, 2009. An unsigned "Addendum to I-360" reads, in part: "[REDACTED] . . . I-360 Filing Date Reverts to August 1, 2007." The petitioner did not elaborate at the time.

On the Form I-360 petition, instructed to state the beneficiary's "Current Nonimmigrant Status," the petitioner wrote "I-485 pending," indicating that the beneficiary had filed an application to adjust status. USCIS records show that the beneficiary had filed a Form I-485 adjustment application on February 3, 2009, based on a Form I-140 employment-based immigrant petition filed on behalf of his spouse. The Director, Texas Service Center, denied the adjustment application on August 6, 2009, and therefore that application was not pending when the petitioner filed the petition on August 31, 2009, or when the petitioner executed the Form I-360 on August 28, 2009. The beneficiary's attorney of record for the adjustment application is also counsel in the present proceeding. As such, USCIS addressed the denial

notice to counsel, who nevertheless referred to the adjustment application as “pending” when he prepared the Form I-360 petition several weeks after the issuance of the denial notice.

Also on Form I-360, the petitioner indicated that the beneficiary had worked for the petitioner “[f]rom August 2007 to present. . . . From January 1997 to July 2007 he also worked as a Music Minister at the Assembly of God Church in the city of Faxinal, Brazil, working 35 hours per week.”

A copy of the beneficiary’s résumé repeated the same details regarding his claimed past employment, and also listed several overlapping periods of still earlier employment at other churches in Maringa, Brazil. According to the dates provided, the beneficiary simultaneously worked for three different churches throughout all, or nearly all, of 1995.

The petitioner submitted copies of various certificates showing the beneficiary’s musical training, but no first-hand evidence of employment from any church in Brazil. The petitioner likewise did not submit any IRS documentation of the beneficiary’s claimed employment in the United States, as required by 8 C.F.R. § 204.5(m)(11)(i).

The director denied the petition on January 15, 2010, stating:

The petition was filed on 8/31/2009. Therefore, the petitioner must establish that the beneficiary has been working continuously since at least 8/31/2007 in lawful immigration status. . . .

USCIS records indicate the beneficiary was last admitted into the United States with a Visitor’s Visa (B2) on 7/8/2007. There is no record indicating that . . . the beneficiary [subsequently] changed immigration status authorizing Beneficiary to engage in lawful employment. However, the record does show that on 2/3/2009, the beneficiary filed an Application to Register Permanent Residence or Adjust Status (I-485) which application was denied. . . . There is no other record to establish that the beneficiary was engaged in and compensated for full time religious work.

. . . The evidence sent in by the petitioner fails to establish that the beneficiary has been engaged continuously in a full time compensated position in lawful immigration status as a religious worker.

On appeal, counsel states: “the Form I-360 contains the alien’s qualifications documenting full time employment in a religious occupation from August 2007 to the present time. . . . In addition, the Form I-360 documents that the alien worked full-time in a religious occupation for more than 10 years in Brazil before he entered the U.S. in July, 2007.” The USCIS regulation at 8 C.F.R. § 204.5(m)(11) specifies the evidence necessary to document prior employment (specifically IRS documentation, or comparable foreign documentation, of compensation). The record does not contain the documentation described in that regulation. The petitioner has submitted no evidence of the beneficiary’s compensation at all. Merely to claim prior employment is not to “document” such employment, as

counsel contends. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The petitioner's appeal contains a new, translated letter, dated October 15, 2009, from [REDACTED], pastor and president of the Assembly of God Church in Faxinal, Brazil, stating that the beneficiary "worked as the Music Minister in our church . . . from January, 1997 to July, 2007. He worked full-time, no less than thirty-five hours per week." This letter does not constitute evidence of compensation or explain the absence of such evidence. Furthermore, the beneficiary's claimed employment in Brazil ended in July 2007, more than two years before the petition's August 2009 filing date.

Regarding the director's finding that the beneficiary lacked lawful immigration status, counsel cites *Ruiz-Diaz v. United States*, No. C07-1881RSL (W.D. Wash. June 11, 2009):

Under section (4) of the Order Directing Entry of Judgment in *Ruiz-Diaz v. U.S.A.*, this period of employment, from November 21, 2007 to the present cannot be considered a period of time in which the applicant failed to maintain continuous lawful status, accrued unlawful presence, or engaged in unauthorized employment. . . . Therefore, the decision denying the petition is predicated on an erroneous analysis of . . . [REDACTED]

In a subsequent brief, counsel states:

[U]nder [REDACTED], beneficiaries of petitions for special immigrant visas whose concurrent filings of I-360 and I-485 were rejected by the Service and who reapply under the Court's order are entitled to have their applications processed as if they had been submitted on their original submission date.

. . . The filing date of the petition actually reverts back to . . . August, 2007 when the church intended and attempted to file the Form I-360 concurrently with the application for adjustment of status.

The petitioner submits a March 2, 2010 affidavit from [REDACTED], assistant pastor of the petitioning church, who states:

In July of 2007 . . . [t]he Pastor and our elders invited [the beneficiary] to join us as a member of the Ministry of our Church. . . . I called the USCIS 800 number, and inquired . . . to determine what steps our church would have to take to obtain a permanent work visa for [the beneficiary] so that he could direct our music ministry. I was told that our church could not achieve such a result because it was impossible to file an Immigrant Petition (I-360) and an Application for Adjustment of Status (I-485) simultaneously. . . .

We relied on that information, because the Immigration Service instructed us. As a result, they refused to accept the applications for filing. . . .

We understand that . . . according to the law, the filing date of the I-360 reverts back to August of 2007 when the [petitioner] would have filed the petition along with [the beneficiary's] application for [adjustment] had the Immigration Service accepted those documents together.

Regarding counsel's claim that the denial rests on "an erroneous analysis of . . . [redacted]" the director did not base the denial on any "analysis of . . . [redacted]" because the petitioner has not shown that the [redacted] decision applies to the present matter. Counsel's past and present assertions rest on two paragraphs of that ruling:

(3) Beneficiaries of petitions for special immigrant visas (Form I-360) whose Form I-485 and/or Form I-765 applications were rejected by defendants pursuant to 8 C.F.R. § 245.2(a)(2)(i)(B) and who reapply under paragraph (2) of this Order are entitled to have their applications processed as if they had been submitted on their original submission date. Any employment authorization that is granted shall be retroactive to the original submission date.

(4) For purposes of 8 U.S.C. § 1255(c) and § 1182(a)(9)(B), if a beneficiary of a petition for special immigrant visa (Form I-360) submits or has submitted an adjustment of status application (Form I-485) or employment authorization application (Form I-765) in accordance with the preceding paragraphs, no period of time from the earlier of (a) the date the I-360 petition was filed on behalf of the individual or (b) November 21, 2007, through the date on which the United States Citizenship and Immigration Services ("CIS") issues a final administrative decision denying the application(s) shall be counted as a period of time in which the applicant failed to maintain continuous lawful status, accrued unlawful presence, or engaged in unauthorized employment.

*Id.* at 2. Paragraph (3), above, does not provide for retroactive filing of a Form I-360 petition. It makes such provision only for "applications," specifically "Form I-485 and/or Form I-765 applications." Therefore, the Form I-485 application would have a filing date more than two years earlier than the Form I-360 petition on which the adjustment application rests. An application or petition shall be denied where any application or petition upon which it was based was filed subsequently. 8 C.F.R. § 103.2(b)(12). The beneficiary cannot retain a 2007 filing date for a Form I-485 that is based on a Form I-360 filed in 2009.

Furthermore, the record contains no evidence that the petitioner actually submitted Forms I-360 or I-485 in 2007. [redacted] affidavit appears to indicate only that the petitioner declined to file those forms in 2007, after learning that they would not be accepted. The *Ruiz-Diaz* ruling applies only

to “Form I-485 and/or Form I-765 applications [that] were rejected”; not to applications that were never filed because applicants were persuaded not to file them.

There is no evidence that the petitioner or the beneficiary submitted or filed a Form I-360 religious worker petition or Form I-485 adjustment application in 2007. The petitioner submits no petition or application documents from 2007; no check or other financial instrument showing an attempt to pay a filing fee; no USCIS rejection notice; or any other documentary evidence that the petitioner actually went so far as to submit Form I-360 or I-485 in 2007. We have only an unsupported claim, two and a half years after the fact, that an unidentified USCIS employee, in a conversation for which no record exists, talked the petitioner out of attempting a concurrent filing of Forms I-360 and I-485. As we have already noted, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. The petitioner has not shown that a claimed oral dissuasion from filing an application amounts to “rejection” of that application for purposes of the *Ruiz-Diaz* ruling. There is no record of the procedural rejection of any prior submission, and therefore no basis to apply the *Ruiz-Diaz* ruling to this proceeding.

Furthermore, with respect to unlawful employment, paragraph (4) of the *Ruiz-Diaz* order stated: “no period of time from the earlier of (a) the date the I-360 petition was filed on behalf of the individual or (b) November 21, 2007, through the date on which [USCIS] . . . den[ies] the application(s) shall be counted as a period of time in which the applicant . . . engaged in unauthorized employment.” Because the petitioner did not file the Form I-360 petition until 2009, *Ruiz-Diaz* only covers the beneficiary’s activities from November 21, 2007 onward. Any earlier United States employment by the beneficiary (including the first few months of the qualifying period) remains unlawful.

Furthermore, USCIS is under congressional mandate “to eliminate or reduce fraud related to the granting of special immigrant status” for religious workers.<sup>1</sup> Counsel’s desired course of action would be an intolerable invitation to fraud. Unqualified aliens seeking undeserved *Ruiz-Diaz* relief could merely claim, with no proof whatsoever, a thwarted intention to file a petition or application.

For the above reasons, we concur with the director’s finding that the petitioner has not established the beneficiary’s continuous, lawfully authorized employment throughout the two years immediately preceding the filing of the petition.

The second and final issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The 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.

---

<sup>1</sup> Section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008).

(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.

On the Form I-360 petition, the petitioner offered the following description of the beneficiary's duties:

Confer with pastor to select music for church services; Plan and schedule rehearsals and performances, and arrange details such as locations, accompanists, and instrumentalists; Transcribe musical compositions and melodic lines to adapt them to church, and/or to create a musical style for our church; Study scores to learn the music in detail, and to develop interpretations; Direct groups at rehearsals and live or recorded performances in order to achieve desired effects such as tonal and harmonic balance dynamics, rhythm, and tempo.

repeated the above list in a separate letter.

In denying the petition, the director found that "the beneficiary's duties . . . may have carried a religious significance," but the petitioner had failed to establish that the beneficiary's position meets all of the requirements of a religious occupation, including recognition as a religious occupation within the denomination (in this instance, the Assemblies of God).

On appeal, counsel cites *Love Korean Church v. Chertoff*, 549 F.3d 749 (9<sup>th</sup> Cir. 2008) and states: "U.S. Courts of Appeals have held that the Service's interpretation of 8 C.F.R. § 204.5(m)(2) governing religious workers is inconsistent with the regulations." USCIS substantially revised its regulations in November 2008, which affects the applicability of court decisions based on the older version of the regulations.

With respect to the question of whether the beneficiary's occupation is "recognized as a religious occupation within the denomination," counsel contends that the petitioner's "religious denomination is Christianity." The USCIS regulation at 8 C.F.R. § 204.5(m)(5) defines the term "religious denomination" to mean a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

(A) A recognized common creed or statement of faith shared among the denomination's members;

- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

Under the above definition, Christianity may be a single religion, but it is not a single religious denomination. Rather, it incorporates numerous denominations, some of which have creeds and doctrines that are incompatible with those of other Christian denominations. For example, the ecclesiastical government of the Roman Catholic denomination includes archbishops, cardinals, and the pope. Protestant denominations reject the authority of those officials.

The petitioner recognized this fact when, on the Form I-360 petition, it stated that the beneficiary's current and former employers "belong to the same religious denomination (Assembly of God)." In the same paragraph, the petitioner indicated that the "Assemblies of God organizations around the world make up the world's largest Pentecostal denomination," thereby acknowledging that even the restrictive term "Pentecostal," itself a subset of Protestant Christianity, refers to a family of denominations rather than one denomination. Counsel prepared the Form I-360, and is therefore aware that the petitioner initially considered its denomination to be Assemblies of God rather than "Christianity" as a whole.

In the United States, the head of the ecclesiastical government of the petitioner's denomination is the General Council of the Assemblies of God, identified on several documents in the record.

Using the discredited presumption that the petitioner's denomination is "Christianity," counsel cites "the Catechism of the Catholic Church, the official statement of Christian belief . . . [which] explains that music is integral to Christian worship." The petitioner submits nothing to show that the General Council of the Assemblies of God recognizes the *Catechism of the Catholic Church* as "the official statement of Christian belief." It is very significant that counsel does not cite any governing document of the Assemblies of God to show that the petitioner's denomination routinely regards the music minister position as a full-time, compensated occupation, rather than a part-time volunteer function.

It bears emphasis that the question is not whether music is part of church services, but whether the petitioner's denomination (the Assemblies of God) considers music ministry to be an occupation. The petitioner claims that the beneficiary worked for the petitioner since 2007, but the record does not include any claim by any church that the beneficiary has ever received compensation for his work as a music minister. The beneficiary's own résumé indicates that he worked for three churches at once throughout most of 1995.

It may well be that the Assemblies of God denomination considers music ministry to be an occupation, always or often filled by a full-time religious worker. Nevertheless, it is the petitioner's burden to show as much, not the director's burden to disprove it. The petitioner submitted no persuasive evidence in this regard, and therefore we agree with the director that the petitioner has not met its burden of proof to show that music ministry is a recognized religious occupation in its denomination (Assemblies of God).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.