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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

[REDACTED]

C1

DEC 08 2013

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

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:

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,

[REDACTED]

Berry Knew
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 Baptist 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. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a statement and several witness letters.

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 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 Form I-360 petition on April 27, 2007. The petitioner indicated that the beneficiary had last entered the United States on October 24, 2006 as an R-1 nonimmigrant religious worker. USCIS records show that the petitioner filed a Form I-129 nonimmigrant petition, receipt number EAC 04 259 51296, on the beneficiary's behalf on September 17, 2004. USCIS records also indicate that the beneficiary's R-1 status commenced on September 30, 2004, indicating that the beneficiary's 2006 entry was not his first entry into the United States. The petitioner, at the time, did not specify how long the beneficiary had been outside the United States before his 2006 reentry.

On September 7, 2007, the director instructed the petitioner to submit information and evidence regarding various subjects, including the beneficiary's prior employment. In response, the petitioner submitted a list of its salaried workers. The beneficiary was not among the seven workers listed. This seemed to indicate that the beneficiary was not one of the petitioner's salaried employees.

██████████ administrator of the ██████████ stated that the beneficiary has been "a full time Pastor in full exercise of his duties for more than 12 years in this ministry." ██████████, senior pastor of the same church, stated:

[The beneficiary] received permission from the United States government to work as a religious worker on September 30th of 2004 expiring on September 30th of 2007.

. . . Because he was totally involved in the administration and development of many activities at the [redacted] and other countries, he and his Family were not able to establish permanent residence immediately in the United States of America on the date settled by the American visa.

However, [the beneficiary] and his wife . . . kept doing their monthly follow up with the churches by frequently flying to the United States of America. This work with the churches has been done for the past 6 years and it has never stopped. They had to increase their visits to the United States because of the needs of the associated churches in Country. . . .

The [beneficiary's] Family entered the United States of America to establish residence on August 29th of 2006 and since that date they have been able to provide a better assistance to the associated churches.

. . . Therefore, the [redacted] maintains a monthly financial support to [the beneficiary] and his family in the amount of \$3,858.00. . . . Besides, the [petitioner] and other associated churches provide extra financial support periodically through love offerings and missionary support.

The record contains no first-hand documentation to show the amount or source(s) of the "extra financial support" that the beneficiary received.

In a letter dated November 21, 2007, [redacted] senior pastor of the [redacted] in [redacted] stated that the beneficiary "has provided relevant services in the last few years to our church and has also served as support to the local church." [redacted] stated that the beneficiary "has been supported by love offerings whenever he is present in our churches." The record also contains an almost identical [redacted] senior pastor of [redacted] b [redacted]

Translated copies of the beneficiary's Brazilian income tax returns indicate that he reported income of 43,790.60 reais per year in 2005 and 2006. An uncertified copy of the beneficiary's 2006 United States income tax return indicates that the beneficiary earned \$12,000 as a minister. The petitioner did not submit payroll or tax documentation to identify the source of the reported income. The beneficiary claimed a residential and business address in Kennesaw, Georgia, about 1,000 miles southwest of the petitioning church in Marlborough, Massachusetts.

While the petition was pending, new USCIS regulations went into effect which applied to all pending special immigrant religious worker petitions. *See* 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). On March 11, 2009, the director instructed the petitioner to submit further evidence, including

documentation of the beneficiary's past employment and compensation. The director specifically instructed the petitioner to provide "signed copies of the beneficiary's 2006, 2007 and 2008 federal income tax" returns, including "all W-2s, forms (such as Form 1099-MISC), schedules, and statements." The director also requested "an itemized record from the Social Security Administration" to identify the employers who have compensated the beneficiary in the United States.

In response, the petitioner indicated that it employed the beneficiary as a "Supervisor Pastor," whose duties included "providing pastoral leadership to other sister churches in the cell vision." A "Schedule of Employees 2009" indicates that the beneficiary worked 46 hours per week, 9:00 to 5:00 on weekdays and 9:00 to 12:00 on weekends.

Weekly payroll reports from January 2006 through December 2008 list the petitioner's employees by name. The beneficiary's name does not appear in any of the reports until well into 2008.

The petitioner did not submit the requested Social Security or tax documents, explain their absence, or even acknowledge that the director had requested them. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The director denied the petition on June 22, 2009, stating that the petitioner had not shown that the beneficiary was lawfully employed throughout the two-year qualifying period. The director noted that the beneficiary's name did not appear on the petitioner's 2006-2007 payroll records, and that the beneficiary apparently accepted payment from a number of churches in the United States.

On appeal, [REDACTED], president of the petitioning church, states:

[W]e invited [the beneficiary] to come to the US to teach us [his] new vision . . . [and] also support and supervise our church on a regular basis. . . .

[W]e started sending [the beneficiary] all over to support the pastors in their needs to continue the growth of church work through the formation of cell groups and teachings of leadership; THAT DOES NOT MEAN HE STARTED [TO] WORK FOR THEM. . . . NO COMPENSATION WAS REQUESTED BECAUSE THE INVOLVED COSTS WOULD BE COVERED BY THE INVITING CHURCH. . . .

As a religious organization we understand that a Minister could perform his vocational work outside its [*sic*] territory and be seen by the congregation as . . . missionary work. But as we stated we clearly understood there are other legal implications under the conditions stipulated by the INA and employment VISA. But that does not mean we were intentionally disobeying the employment certification. It was our lack of knowledge of that interpretation of the law which we want to completely comply with.

We are on the side of the law and are willing to make all corrections that might be necessary to clear that. . . .

[The beneficiary] has been working for my church full time no less than 40 hours per week, and one of his MAJOR functions has been to . . . consolidate the connections between my church and other Brazilian Churches.

(Capitalization in original.) The petitioner submits letters from eight churches in the eastern United States, from Massachusetts to Florida. As with the earlier group of letters, these letters are nearly identical, even including the same punctuation error in the phrase "Please note/ that our church has a special connection history. . . ." Most of the letters also contain the misspelled word "Ministrying." Clearly the eight different churches did not write their letters independently. The record does not identify the true author of the letter. The body of the letter indicates that each church is connected to the petitioner through "the New Evangelism Strategy named CELL VISION," and that the beneficiary "never worked independently in our church or received any financial compensation from us. The [petitioning church] compensated [the beneficiary] for the connection services he performed for us."

The petitioner submits original earnings statements, showing that the petitioner paid the beneficiary \$500 per week. The earliest of these statements is dated July 4, 2008, more than a year after the filing of the petition. Therefore, the statements are not evidence of the beneficiary's lawful, continuous employment with the petitioner between April 2005 and April 2007.

The new letters on appeal contain the claim that the beneficiary "never . . . received any financial compensation from us. The [petitioning church] compensated [the beneficiary] for the connection services he performed for us." This claim flatly contradicts the petitioner's assertion, also on appeal, that the beneficiary's "costs would be covered by the inviting church." None of these competing, contradictory claims has any documentary support in the record. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The director instructed the petitioner to submit official documentation that would have identified the source(s) of the beneficiary's income in 2005-2007, but the petitioner was either unwilling or unable to submit these documents.

In 2007, the petitioner did not include the beneficiary in its payroll records or on a list of its "Salaried Workers." Other churches offered letters stating that the beneficiary "has been supported by love offerings." Officials of the beneficiary's former church in Manaus, Brazil, indicated that the beneficiary relied mostly on stipends from Manaus, with additional contributions from the petitioner and other churches. If the beneficiary was working at other churches; receiving financial support from other churches; and residing in Georgia instead of Massachusetts, then it is difficult to find any meaningful sense in which the beneficiary was working for the petitioner during the relevant period.

When the beneficiary entered the United States as an R-1 nonimmigrant religious worker, the USCIS regulation at 8 C.F.R. § 103.2(b)(6) required the filing of a new petition if "[a] different or additional

organizational unit of the religious denomination [sought] to employ the beneficiary's services. . . . Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status." A similar requirement exists in the revised regulation at 8 C.F.R. § 214.2(r)(13).

Under the regulation at 8 C.F.R. § 274a.12(b)(16), an R-1 nonimmigrant may be employed only by the religious organization through whom the alien obtained that status. More generally, the USCIS regulation at 8 C.F.R. § 214.1(e) provides that a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. The regulatory structure does not permit an alien's assignment, on paper, to one church while the alien actually works and receives payment from other churches.

The documentation of the beneficiary's compensation during the qualifying period is sparse and fragmentary, and the record contains conflicting claims about the source(s) of that compensation. The beneficiary's R-1 nonimmigrant status permitted him to work for, and at, the petitioning church in Marlborough, Massachusetts; it did not permit him to accept payment from a series of churches up and down the East Coast. Therefore, we agree with the director's finding that the petitioner has not submitted sufficient evidence of the beneficiary's continuous, lawful employment during the 2005-2007 qualifying period.

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.