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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

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 16 2010

IN RE: Petitioner: [redacted]
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:

[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,

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 vocal and worship leader at the petitioner's satellite church in Myrtle Beach, South Carolina. The director determined that the petitioner had not established that had the required two years of continuous, lawful work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits letters, photographs, and other materials intended to show that the beneficiary has worked as claimed.

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 September 30, 2008. On the petition form, the petitioner stated the beneficiary's "Current Nonimmigrant Status" as "R2."

While the petition was pending, USCIS published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). On February 9, 2009, the director instructed the petitioner to submit evidence newly required under the revised regulations, including evidence of the beneficiary's qualifying employment during the 2006-2008 qualifying period.

In response, [redacted] vice president and pastor of the petitioning church, stated:

> [The beneficiary] applied for [a] tax ID [number in] 2007 and our CPA is waiting for employment authorization card to apply for a Social Security Card so we will be able

> to provide her W-2 form. However since October 2008 we provide her with full board compensation including food, housing, travel expenses, and transportation. Since February 2009 she has been receiving $200 weekly. . . .
>
> [The beneficiary] entered [the] US with [an] R-2 visa. She is part of a missionary family and was not an employee before 2008, she was a volunteer worker. [The beneficiary] learned a lot from her parents and she was supported by them. . . .
>
> [The beneficiary] did not work before in the United States other than volunteering.

In a separate letter, [redacted] stated that the beneficiary "has been working with us as a volunteer since April 15th, 2006, receiving as compensation room and board."

The director denied the petition on June 8, 2009, stating that the petitioner had not shown that the beneficiary met the regulatory requirements for qualifying employment experience. The director acknowledged the petitioner's assertion that the beneficiary "has been working with [the petitioner] . . . on an R2 visa."

On appeal, [redacted] outlines the beneficiary's work history since 1994, following her travels with her family through Luxembourg, Portugal, and other countries before arriving in the United States to work in New Jersey, Georgia, and South Carolina. To document this history, the petitioner submits copies of letters, photographs and the beneficiary's father's payroll documents.

Under the present regulations, we cannot simply consider whether or not the beneficiary worked for the church during 2006-2008. We must also ask whether the beneficiary worked in lawful immigration status, as required under 8 C.F.R. § 204.5(m)(4), and whether the work was authorized under United States immigration law, as required under 8 C.F.R. § 204.5(m)(11).

As we have previously noted, and as the petitioner has consistently acknowledged, the beneficiary entered the United States as an R-2 nonimmigrant in 2005. The petitioner does not claim, and there is no evidence to show, that the beneficiary ever changed her nonimmigrant classification.

Under the regulation at 8 C.F.R. § 214.2(r)(4)(ii)(B), R-2 nonimmigrants may not accept employment. Therefore, any employment the beneficiary undertook while in R-2 status was, necessarily, unauthorized. Because the beneficiary received room and board in exchange for her own work for the church, then she was employed without authorization. The Board of Immigration Appeals ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

We note that the regulation at 8 C.F.R. § 204.5(m)(11)(iii) allows for certain circumstances in which an uncompensated alien provided for his or her own support. The regulation at 8 C.F.R. § 214.2(r)(11)(ii) describes the acceptable conditions for self-support. The petitioner has not

claimed or shown that the beneficiary met those conditions. Therefore, the beneficiary would remain ineligible for the benefit sought, even if we were to assume that the beneficiary received room and board as a dependent of her R-1 nonimmigrant father rather than as compensation for her own work.

We further note that, to qualify for classification as an R-2 nonimmigrant, an alien must be an R-1 nonimmigrant's spouse or unmarried child under the age of 21. *See* 8 C.F.R. § 214.2(r)(8) (2005), superseded by the new regulation at 8 C.F.R. § 214.2(r)(4)(ii). The record indicates that the beneficiary has never married, and was 24 years old when she entered the United States in 2005. Therefore, it is not clear how the beneficiary could have properly qualified for admission as an R-2 nonimmigrant.

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.