



U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **DEC 21 2010**

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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,

2 Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (VSC), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the Director, California Service Center (CSC) for a new decision based on revised regulations. The CSC director again denied the petition and certified the decision to the AAO. Although the CSC director's certification ensured that the AAO would review the decision, the petitioner filed an appeal on Form I-290B, Notice of Appeal or Motion. The AAO will affirm the CSC director's decision.

The petitioner is a regional conference of the Seventh-day Adventist (SDA) 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 literature evangelist. The CSC director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful work experience immediately preceding the filing date of the petition.

In response to the certified decision, the petitioner submits documentation of the beneficiary's qualifications as a literature evangelist and statements from various church officials.

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 petitioner filed the Form I-360 petition on January 19, 2006. The beneficiary entered the United States on April 7, 2004, and therefore was outside the United States for part of the two-year qualifying period. Materials submitted with the petition show that the beneficiary entered the United States as a B-2 nonimmigrant visitor; that status expired on October 6, 2004. B-2 nonimmigrant status does not authorize employment in the United States. The beneficiary then changed status to R-1 nonimmigrant religious worker beginning on October 6, 2004. The beneficiary still held that status when the petitioner filed the petition.

At the time the petitioner filed the petition, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(3)(ii)(A) required the petitioner to establish that, immediately prior to the filing of the petition, the alien has the required two years of experience in qualifying religious work.

The petitioner's initial submission contained several documents attesting to the beneficiary's membership and rank (elder) in the SDA church, but not to his experience. A copy of a "Missionary Credential" identified the beneficiary as a "Literature Evangelist," but the petitioner issued this credential on January 31, 2005, less than a year before the petition's filing date.

Pastor [REDACTED] the petitioner's publishing director, stated in a December 15, 2005 letter that the beneficiary "served as a Literature Evangelist [REDACTED]. His employment with the denomination has continued uninterrupted since that time."

On February 28, 2006, the VSC director issued a request for evidence (RFE), instructing the petitioner to submit "evidence that establishes that the beneficiary has the [required] continuous two years full-time experience . . . for the period immediately prior to January 19, 2006." In response, the petitioner submitted photocopies of three paychecks that the petitioner's "Family Health Education Service" had issued to the beneficiary. The earliest check, dated November 12, 2004, is in the amount of \$346.60. The other two checks are dated one day apart from each other. A check for \$600.00 bears the date September 7, 2005; the September 8, 2005 check is for \$450.00.

The petitioner also submitted uncertified copies of Internal Revenue Service (IRS) documents. An IRS Form 1099-MISC Miscellaneous Income statement indicates that the petitioner paid the beneficiary \$3,908.90 in "Nonemployee compensation" in 2005. On his IRS Form 1040 income tax return for 2005, the beneficiary claimed \$11,244 in "Business income" in addition to the \$3,909 shown on Form 1099-MISC. The beneficiary reported \$4,500 in "Business income" on his 2004 income tax return. The beneficiary stated that all this income was from literature evangelism. The petitioner submitted no evidence of the beneficiary's employment or compensation outside the United States, or to show how the beneficiary supported himself as a B-2 nonimmigrant unable to work legally in the United States. Documentation of the beneficiary's membership and rank in the LDS church is not evidence of continuous employment in that church.

The VSC director denied the petition on October 3, 2007, in part because the petitioner had submitted no evidence of the beneficiary's employment between January and October 2004. On appeal, the

petitioner submitted several notarized witness statements. [REDACTED] of Brooklyn, New York, who stated: "I . . . provided food and shelter in my house to [the beneficiary] since his arrival (April 2004) . . . until October 2004." Accompanying documents showed that [REDACTED] worked for a delivery service based in Jersey City, New Jersey.

[REDACTED] senior pastor of [REDACTED] SDA Church, stated that the beneficiary "serv[ed] as a Layman at Three Angels Congregation" from April to October 2004, where "[h]e was a Sabbath School teacher, preacher and departmental leader." [REDACTED] did not claim that the beneficiary received any compensation for this work. Officials of a second church limited their comments to the beneficiary's current activities rather than his past work and compensation.

While the appeal was pending, USCIS published substantially revised regulations for the special immigrant religious worker classification. Supplementary information published with the new regulations specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). On December 16, 2008, the AAO remanded the petition to the CSC director for a new decision under the new regulations.

The 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.

On December 24, 2008, the CSC director issued a second RFE. The CSC director did not cite any of the new regulations. Instead, the RFE concerned only the question of whether the beneficiary's intended position qualifies as a religious occupation. Because the RFE did not address the beneficiary's past experience, the petitioner's response included no evidence in that regard.

The CSC director denied the petition on May 7, 2009, noting that the petitioner has submitted no evidence of the beneficiary's employment prior to his April 2004 entry into the United States. The CSC director also noted that the petitioner has not shown that the beneficiary was lawfully authorized to work in the United States before October 2004. The CSC director quoted the new regulation at 8 C.F.R. § 204.5(m)(4) in full, but did not quote, cite or mention the new regulation at 8 C.F.R. § 204.5(m)(11). Because the CSC director had not previously advised the petitioner of the new requirements with respect to evidence of past employment, we will give full consideration to any such evidence that the petitioner has submitted in response to the certified decision.

In a new letter, Pastor [REDACTED] states that the beneficiary "was granted R-1 nonimmigrant status on October 06, 2004. Between April 7, 2004 and October 5, 2004, [he] engaged in employment with [REDACTED] Seventh Day Adventist Church" (the "Three Angels Congregation" previously mentioned by [REDACTED]). Pastor [REDACTED] does not claim that USCIS authorized the beneficiary to work between April and October 2004, and he does not mention any employment prior to April 2004.

The petitioner submits a letter from Pastor [REDACTED] secretary of the [REDACTED] Northern Dominican Association, who states that the beneficiary "served as a volunteer laborer" for "approximately 20 hours a week." Pastor [REDACTED] did not provide any dates for when this work took place, and he did not claim that the beneficiary received any compensation. Instead, his letter (as translated) contains repeated references to the beneficiary as a "volunteer."

The petitioner also submits further copies of various certificates attesting to the beneficiary's training and standing within the [REDACTED] church. None of these documents attest to past employment, either compensated or as a self-supporting missionary.

The petitioner has submitted no evidence of employment as a compensated religious worker or as a self-supporting missionary in the Dominican Republic prior to April 2004. The petitioner claims that the beneficiary worked from April 2004 to October 2004, but has submitted no evidence of compensation. Also, the record indicates that the beneficiary was a B-2 nonimmigrant during that time, and was therefore not authorized to work in the United States. The petitioner has submitted minimal evidence of

compensated employment after October 2004, but such evidence does not cover the two-year period that the statute requires. We therefore agree with the CSC director's finding that the petitioner has not met its burden of proof with respect to evidence of qualifying, lawful prior employment.

Review of the record shows that the petitioner has failed to meet other regulatory requirements. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

We acknowledge that the CSC director did not advise the petitioner of certain new requirements. Nevertheless, the beneficiary's lack of employment authorization during much of 2004 is, on its face, a disqualifying factor. Therefore, a request for other required documentation would have no practical effect on the outcome of the petition. *See* 8 C.F.R. § 103.2(b)(8).

The regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to submit a detailed attestation containing information about the petitioner, the beneficiary, and the job offer. The record does not contain this required attestation, and its omission is another ground for denial of the petition.

The regulation at 8 C.F.R. § 204.5(m)(10) reads as follows:

*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.

In his initial letter on the beneficiary's behalf, Pastor ██████ stated that the beneficiary "is expected to earn a minimum of \$875.00 per week." In the petitioner's first appeal, Pastor ██████ stated: "This position is a full time one and carries a weekly salary of \$425.00. He will not be dependent on any supplemental income." Taken together, these two claims indicate that the majority of the beneficiary's "expected" earnings would come from a source other than his "weekly salary." The petitioner did not explain how the beneficiary would make up the difference. Also, as noted above, the beneficiary claimed to have earned a total of \$15,153 in 2005 – a rate lower than \$300 per week. The petitioner reported only \$3,908.90 on IRS Form 1099-MISC, a rate of about \$75 per week.

The petitioner has not established that the beneficiary has ever earned an amount close to \$875 per week, or that the petitioner has the capacity to compensate the beneficiary at that rate. The petitioner also has not explained why the beneficiary is "expected to earn a minimum of \$875.00 per week" if

his “weekly salary” is less than half that amount. If the beneficiary’s income is to depend heavily on commissions from sales of literature, then the burden is on the petitioner to demonstrate that the beneficiary is not a fundraiser – a position specifically excluded from the regulatory definition of “religious occupation” at 8 C.F.R. § 204.5(m)(5):

*Religious occupation* means 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.

Also, the paychecks from the “Family Health Education Service” raise the possibility that the beneficiary sells not religious literature, but materials about health, nutrition, or related secular subjects. It is not immediately clear how the sale of literature regarding intrinsically secular subject matter primarily relates to a traditional religious function.

The AAO will deny the petition 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, the petitioner has not met that burden.

**ORDER:** The CSC director’s decision of May 7, 2009 is affirmed. The petition is denied.