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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**

[REDACTED]

C-1

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **DEC 28 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, 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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will grant the motion and reaffirm its previous decision to deny the petition.

The petitioner is a [REDACTED]. It seeks to classify the beneficiary as a special immigrant religious worker under section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a chaplain. The 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. The AAO agreed with the director's finding. On motion, the petitioner submits arguments from counsel, witness statements, and background documents.

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 . . . ; 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) requires that an alien's qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner filed the Form I-360 petition on May 14, 2007. The director denied the petition on November 23, 2009, and the petitioner appealed that decision to the AAO. The AAO dismissed the petitioner's appeal on April 16, 2010. The AAO's April 2010 decision provided further details of the proceeding's history. The AAO previously noted that the petitioner's Form I-360 petition (which counsel prepared) included the following information about the beneficiary:

Date of Arrival [in the United States]: 03/11/2000

Current Nonimmigrant Status: R-1 [religious worker]

Expires on: R-1 OVERSTAY

Is the [beneficiary] in deportation or removal proceedings? Yes

Has the [beneficiary] ever worked in the U.S. without permission? No

USCIS records show that the beneficiary held R-1 nonimmigrant religious worker status from June 26, 2000 to June 14, 2003, through a Form I-129 petition (receipt number [REDACTED] filed by [REDACTED]).

In an April 13, 2007 letter, [REDACTED] the petitioner's president, stated that the beneficiary

was employed full time as [REDACTED] from October 16, 2003 to January 31, 2005. . . . [The beneficiary] was employed full time as [REDACTED] petitioner] . . . from September 1, 2005 to November 15, 2006. In May 2006, [the beneficiary] completed one unit of Level One in [REDACTED] [The beneficiary] is on leave of absence pending renewal of his work permission and is currently continuing his [REDACTED]

In denying the petition, the director stated: "the record makes clear that the beneficiary was not in lawful immigration status at the time of filing this petition." The director also noted that the beneficiary's "nonimmigrant status expired on June 14, 2003. Therefore, the beneficiary was out of status during the entire two year period." The director acknowledged the petitioner's assertion "that the beneficiary worked for at least the period September 1, 2005, through November 15, 2006" for the petitioner, but "the record generally fails to confirm the beneficiary's other activities during the rest of the two-year period."

On appeal, counsel protested that the director did not issue a request for evidence (RFE) before denying the petition. The AAO responded:

The principal basis for the denial of the petition was the beneficiary's admitted lack of legal status, which is a disqualifying factor on its face. If the petitioner's initial submission shows grounds of ineligibility, which is the case here, then the USCIS regulation at 8 C.F.R. § 103.2(b)(8)(i) prescribes denial on that basis, without issuance of an RFE. . . . Because the petitioner has neither submitted nor even identified any further evidence that could overcome the basis for denial, we conclude that remanding the petition for the issuance of an RFE would serve no useful purpose. . . .

USCIS records confirm that the beneficiary filed eleven applications for employment authorization between 2002 and 2009, but only the first six applications were approved. The beneficiary filed the last approved application on November 22, 2005, with receipt number [REDACTED]. USCIS approved that application on February 3, 2006, granting the beneficiary employment authorization from March 3, 2006 through March

2, 2007. The beneficiary has since filed five applications for employment authorization, but all were denied.

Several of counsel's arguments on motion revolve around two sentences from the AAO's dismissal notice: "The AAO takes administrative notice that the leader of [REDACTED] was convicted on eight federal charges relating to immigration fraud in September 2004." The AAO cited "a Department of Justice press release" that contained additional details. Counsel condemns the AAO's reliance on "hearsay" (on the grounds that a Department of Justice press release is not evidence that a conviction actually took place), and observes that the press release mentioned neither the petitioner nor the beneficiary. The AAO mentioned [REDACTED] conviction in passing, because [REDACTED] organization had previously filed a petition for the beneficiary, but that conviction did not determine or affect the outcome of the AAO's April 2010 decision. Even if the petitioner were to prove that the office of the United States Attorney for the Southern District of New York was somehow mistaken in the belief that it had prosecuted and convicted [REDACTED] that would not establish any substantive error in the AAO's April 2010 decision. Therefore, there is no reason to discuss counsel's specific arguments regarding [REDACTED] conviction.

Counsel states: "The Decision overlooks the fact that the Beneficiary was in lawful immigration status during the two years preceding the filing of the petition." To support this claim, counsel cites the regulation at 8 C.F.R. § 204.5(m)(4)(iii), which allows for a break in the continuity of the alien's work so long as the nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States.

Counsel contends that, during periods without employment authorization, "the Beneficiary took a leave of absence. . . . During his leave, the Beneficiary pursued religious education training at the pastoral education program at [REDACTED] and continued to volunteer his religious services as [REDACTED]"

In a new letter, [REDACTED] (who refers to the petitioner by its initials "ICCD") states:

ICCD employed [the beneficiary] from October 16, 2003 to January 31, 2005 as Deputy Imam. On February 1, 2005, [the beneficiary] took a sabbatical leave of absence. During this sabbatical which lasted until August 31, 2005, [the beneficiary] engaged in religious studies and practices and volunteered his religious services to ICCD.

After completion of his sabbatical, ICCD employed [the beneficiary] from September 1, 2005 to November 16, 2006 as Chaplain. During his period of lawful authorized employment, [the beneficiary] enrolled in the [REDACTED] [REDACTED] on September 12, 2005. [The beneficiary] completed his first [REDACTED]

On September 11, 2006, [the beneficiary] enrolled in the extended [REDACTED] [REDACTED]. On November 15, 2006 [the beneficiary] belatedly received notice that his pending application for permanent resident status had been denied several months earlier on February 16, 2006.

After receiving this notice, [the beneficiary] took a second sabbatical leave from his employment at ICCD. During this sabbatical, [the beneficiary] engaged in further religious studies and practices and clinical pastoral education training and volunteered his religious services at ICCD and AMC.

The above dates basically agree with those in [REDACTED] April 2007 letter, but this motion is the first time that the petitioner or counsel put forth any claim that the beneficiary's lapses in employment authorization coincided with "sabbaticals" or "leaves of absence."

We disagree with the petitioner's claim that the beneficiary's continued work for the petitioner amounts to a "sabbatical" or "leave of absence" simply because the petitioner temporarily stopped paying him. Furthermore, for much of this period, the beneficiary was not authorized to be in the United States at all. The petitioner has already acknowledged that the beneficiary was in removal proceedings since November 2006. If the beneficiary's very presence was unlawful, then any work he performed, paid or otherwise, was also unlawful and unauthorized.

The regulation at 8 C.F.R. § 204.5(m)(4)(ii) accounts for a "break . . . for further religious training." The petitioner, however, has not shown that the beneficiary's training at AMC actually interrupted his work for the petitioner. The timeline presented in [REDACTED]'s latest letter shows that the beneficiary's training at AMC overlapped with his work at the mosque. Because the beneficiary was able to work and study simultaneously, those studies did not necessitate a break in the continuity of that work.

The petitioner submits various materials, including an affidavit from the beneficiary, concerning a medical condition in the beneficiary's family and the beneficiary's father's outspoken opposition to extremist groups such as Al Qaeda. We do not dispute these materials, but they are not relevant to the motion before the AAO. The only valid purposes of the motion are to establish prior adjudicative error or to introduce new evidence showing that the beneficiary qualifies for the employment-based immigrant classification he seeks.

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 affirm its prior dismissal of the appeal.

ORDER: The AAO's decision of April 19, 2010 is affirmed. The petition remains denied.