

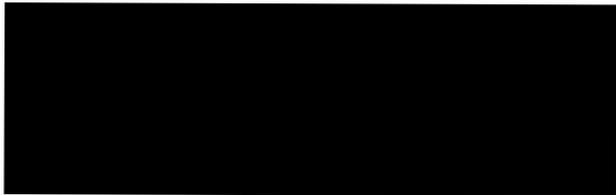
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
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FILE: WAC 09 127 51227 Office: CALIFORNIA SERVICE CENTER Date: FEB 01 2010

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: 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:

SELF-REPRESENTED

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 employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Part 1 of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, identifies the [REDACTED] as the petitioner. Review of the petition, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 10 of the Form I-360, "Signature," has been signed not by any church official, but by the alien beneficiary herself. Thus, the alien, and not the church, has taken responsibility for the content of the petition.

The self-petitioner seeks classification 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 radio announcer. The director determined that the petitioner had not established that the proffered position qualifies as that of a religious vocation or occupation.

The petitioner submits additional documentation in support of the appeal.

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 issue presented on appeal is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) 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.
- (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 for Amerasian, Widow(er), or Special Immigrant, the petitioner described the duties of radio announcer as follows:

Announce organization program information such as program schedules and station breaks for commercials and public service information. Introduce and close programs, read prepared scripts on the air, make promotional appearances and do remote broadcast for the organization.

In part 8 of the Form I-360, the petitioner stated that the radio announcer “prepares programs and determine[s] news and information that is appropriate for broadcast.” The petitioner submitted no other documentation regarding the duties of a radio announcer, such as a job description or a detailed schedule of her work.

The director denied the petition, finding that the petitioner had failed to submit any documentation to establish that the position is recognized as a religious occupation within her denomination or that it is a traditional function of the denomination.

On appeal, the petitioner submits a May 18, 2009 unsigned letter from [REDACTED] of the [REDACTED], which apparently operates KNDI 1270 AM radio. [REDACTED] stated that the radio station provides air time to various churches within the community, and that:

The Pastor of the church selects a member of his congregation whom he knows has the expertise to broadcast on radio and can provide a much needed outreach ministry

to their community. [REDACTED] has been broadcasting on our radio airwaves since 1989 every Saturday from 10:00 pm - 12:00 am. It is our continued pleasure to be of service to the underserved Pacific Islander residents in Hawaii. The ongoing demand for this radio ministry continues to grow due to the benefits the ministry provides to the community.

The letter from the radio station does not establish that the position of radio announcer is a religious occupation within the petitioner's denomination. [REDACTED] describes the broadcast as a radio ministry but provides no information about the actual content of the broadcast. The petitioner also provided a copy of the bylaws of [REDACTED] her prospective employer. The bylaws, however, do not identify any specific positions within the church.

The petitioner provides no documentation to establish that the position of radio announcer is primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. The petitioner submitted no documentation that the position of radio announcer relates to a traditional religious function within the denomination and submitted no documentation from an authorized official of the denomination or other similar documentation to establish that the position is recognized as a religious occupation within the petitioner's denomination.

Accordingly, the petitioner has failed to establish that the position of a radio announcer is a religious occupation within the meaning of the regulation.

Beyond the decision of the director, the petitioner has failed to establish that her prospective employer is a bona fide religious organization. The regulation at 8 C.F.R. § 204.5(m)(8) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner submitted no documentation to establish that her prospective employer is a bona fide nonprofit religious organization.

Additionally, the petitioner failed to establish that she worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

The petition was filed on March 30, 2009. Accordingly, the petitioner must establish that she had been continuously employed in qualifying religious work throughout the two-year period

immediately preceding that date. The petitioner, however, provided no documentation to establish that she worked in any capacity during the two years immediately preceding the filing of the visa petition.

The petitioner also failed to establish that she sought entry into the United States for the purpose of working in a full time (average of at least 35 hours per week) compensated position. 8 C.F.R. § 204.5(m)(2). The petitioner submitted no documentation of a job offer showing the terms of her employment, including the hours she would be expected to work or the proposed compensation. Accordingly, she has not established that she will be engaged in full-time, compensated work within the United States.

The petitioner has additionally failed to establish that her prospective employer has the ability to compensate her. The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

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.

The petitioner submitted no documentation to address this issue.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied 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, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.