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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 09 018 50407 Office: CALIFORNIA SERVICE CENTER Date: FEB 01 2010

IN RE: Petitioner:
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:



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).

M. Deadrick
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.

The petitioner is a district office of the Church of the Nazarene. 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 pastor for its Spanish Ministry at Beulah Church of the Nazarene. The director determined that the petitioner had not provided the attestation required by the regulation and had not established that the beneficiary had worked continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing of the visa petition.

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 first issue on appeal is whether the petitioner provided the attestation required by the regulation at 8 C.F.R. § 204.5(m)(7), which requires the petitioner to submit the following:

Attestation. An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. If the alien is a self-petitioner and is also an authorized official of the prospective employer, the self-petitioner may sign the attestation. The prospective employer must specifically attest to all of the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;

(ii) The number of members of the prospective employer's organization;

(iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;

(iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;

(v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;

(vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;

(vii) That the alien will be employed at least 35 hours per week;

(viii) The specific location(s) of the proposed employment;

(ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;

(x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;

(xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and

(xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

The petitioner failed to submit the above attestation with the petition. In response to a request for evidence (RFE) dated February 4, 2009, the petitioner provided several documents, apparently in an attempt to respond to the issues required to be addressed in the attestation. The director determined that the petitioner's response did not meet the requirement of the regulation. On appeal, the petitioner provided the appropriate required attestation. We find that the petitioner has sufficiently provided the information in the format required by the regulation and withdraw the director's determination to the contrary.

The second issue on appeal is whether the petitioner established that the beneficiary had the requisite two years continuous experience in a religious vocation or occupation for the two 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 petitioner, therefore, must show that the beneficiary had been working 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 petition was filed on October 27, 2008. Accordingly, the petitioner must establish that the beneficiary had been continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

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.

In its September 30, 2008 letter submitted in support of the petition and signed by its assistant superintendent, the petitioner stated that the beneficiary had “served in the Christian Ministry for several years with our Christian Community in his country and has served in the United States since March 2007.” The petitioner provided a copy of a November 15, 1995 “certificate of ordination” indicating that the beneficiary was ordained as a minister of the gospel in the Church of the Nazarene. The petitioner submitted no other documentation regarding the beneficiary’s work experience. On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner stated that the beneficiary had entered the United States on September 29, 2006 pursuant to an R-1, nonimmigrant religious worker visa.

In a March 17, 2009 letter submitted in response to the RFE, [REDACTED] stated that the beneficiary began working at the [REDACTED] “on February 01 of this year.” The petitioner also submitted another letter dated April 20, 2009 and signed by the assistant superintendent in which it again stated that the beneficiary had served with the organization since March 2007. The assistant district superintendent reiterated this date in a June 23, 2009 letter submitted on appeal. The petitioner also provided a copy of a USCIS Form I-797 A, Notice of Action, indicating that the petitioner

petitioned for R-1 status for the beneficiary on January 31, 2007, and that the petition was approved on January 4, 2008. The petitioner has provided conflicting information regarding the beneficiary's work with the petitioning organization. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner submitted a March 20, 2009 letter, purportedly from [REDACTED] in Guatemala City but signed by another individual. The letter indicated that the beneficiary had served as a pastor in [REDACTED] for more than five years prior to traveling to the United States. However, the petitioner has submitted none of the documentation required by 8 C.F.R. § 204.5(m)(11) to establish the beneficiary's prior claimed employment in Guatemala. Thus, the petitioner's documentation is insufficient to establish that the beneficiary worked in a qualifying religious occupation or vocation during the two years immediately preceding the filing of the visa petition.

Additionally, the record does not establish that the beneficiary worked in the United States in a lawful immigration status from his entry until his R-1 visa was approved on January 4, 2008. The Form I-360 indicated that the beneficiary arrived in the United States on September 29, 2006. This information corresponds with a copy of the beneficiary's visa, also submitted by the petitioner, which shows that the beneficiary entered the United States on September 29, 2006 pursuant to a B-2 visitor's visa for the purpose of attending a religious conference. The expiration date of the beneficiary's visa was October 26, 2006. In several letters, the petitioner alleged that the beneficiary began working pursuant to an R-1 visa in March 2007. However, while a petition for the beneficiary to receive R-1 status was filed in January 2007, it was not approved until January 2008. Therefore, any work performed by the beneficiary in the United States prior to January 2008 was in an unauthorized immigration status and interrupts the continuous work experience required by the regulation.

Accordingly, the record does not establish that the beneficiary has worked continuously in a qualifying religious occupation or vocation for two years immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established the prospective employer's ability to compensate the beneficiary. In its September 30, 2008 letter, the petitioner stated that the beneficiary would receive an annual salary of \$20,000 plus housing and utilities. In documentation submitted on appeal, the petitioner indicates an annual salary of \$30,000. The petitioner provided no documentation that it has paid the beneficiary in the past. 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 partial copies of bank statements for the beneficiary's prospective employer for the months of March 2008 to January 2009. The petitioner provided none of the documentation required by the above cited regulation. Accordingly, the petitioner has not established that it has the ability to compensate the beneficiary at the proffered rate.

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.