

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

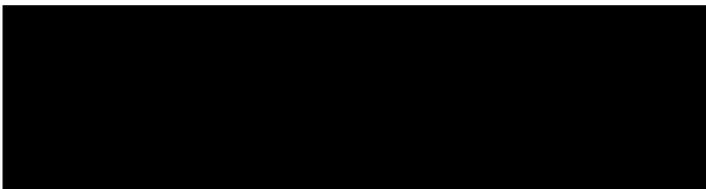
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

C1



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 23 2010
WAC 09 010 51296

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:
[REDACTED]

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
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 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 pastor. The director determined that the petitioner had failed to establish that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel asserts that the beneficiary's failure to renew his work authorization was through no fault of his own. Counsel submits a letter and 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 established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the 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.

Therefore, the petitioner 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 15, 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.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary entered the United States on August 16, 1999 and that his nonimmigrant status had expired on February 15, 2000. The petitioner submitted no documentation that the beneficiary was authorized to work in the United States at any time. As cited above, any work by the beneficiary that occurred in the United States in an unauthorized status is not qualifying work for the purpose of this visa petition.

In its September 20, 2008 letter submitted in support of the petition, the petitioner stated that the beneficiary has served as acting pastor of its Hispanic congregation since July 2004. The petitioner provided a list of the beneficiary's duties and his schedule, which amounted to 23 hours per week and six additional hours of duties that occurred during a monthly time frame. In a September 1, 2008 letter, the petitioner stated that it paid the beneficiary \$5,200 in 2006 and 2007, and \$2,400 through June 30, 2008. The petitioner provided copies of the IRS Forms W-2 that it issued to the beneficiary in 2006 and 2007, reflecting these amounts.

The petitioner provided a copy of a Form I-797 A, Notice of Action, indicating that a Form I-360 petition, USCIS receipt number SRC 00 208 50037, filed on behalf of the beneficiary by [REDACTED] on July 1, 2000, had been approved on July 7, 2000. The beneficiary's Form G325A, Biographic Information, signed by the beneficiary on October 10, 2008, indicates that he worked for [REDACTED] as an associate pastor from August 1999 to December 2002, as an oil change laborer from September 2002 to May 2004, as associate pastor of Town Center Community Church of God from July 2002 to July 2004, and as a machine operator from May 2004 to October 2008.

The director denied the petition, finding that the beneficiary last entered the United States on August 16, 1999 pursuant to a B-2 nonimmigrant visitor visa with no authorization to work, and had not received approval to engage in lawful employment.

On appeal, counsel asserts that the beneficiary received authorization to work based on the approved petition signed by [REDACTED], which was valid from February 27, 2001 to February 26, 2002. Counsel further asserts that after appearing for an adjustment of status interview on November 4, 2002, the beneficiary received no further notification from USCIS, discovering only recently that his I-485, Application to Register Permanent Residence or Adjust Status, had been denied on June 20, 2006. Counsel concedes that the beneficiary failed to

renew his employment authorization but that his failure to do so was through no fault of his own. Counsel appears to suggest that some inaction of USCIS prevented the beneficiary from renewing his employment authorization; however, he does not specify the nature of that alleged inaction.

Even assuming, however, that USCIS in some manner failed to act, the beneficiary would not, without more, have been entitled to renew his work authorization. The work authorization was granted to the beneficiary as a religious worker based on his work with [REDACTED]. However, the beneficiary indicated that he worked for that organization only through December of 2002. None of the other work engaged in by the beneficiary from the date he terminated his association with his sponsoring organization was in an authorized status. Accordingly, none of the work performed by the beneficiary during the two years before the petition was filed qualifies as experience pursuant to 8 C.F.R. § 204.5(m)(11).

The petitioner has therefore failed to establish that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

Beyond the decision of the director, the petitioner has failed to establish its ability to compensate the beneficiary. In a March 15, 2009 letter, the petitioner stated that it would pay the beneficiary a salary of \$500 per week. 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 provided copies of Forms W-2 that it issued to the beneficiary in 2006 and 2007, indicating that it paid the beneficiary \$5,200. The petitioner also provided a consolidated income and expense statement for 2007, and a combined income and expense report for the years 2005 through 2007. The petitioner's documentation does not include evidence that it has previously compensated the beneficiary or anyone in a similar position in the amount it states it will pay the beneficiary, has not provided a budget showing that it has set aside money to compensate the beneficiary, and has not provided any of the other documentation specified in the above-cited regulation. The petitioner has therefore failed to provide documentation to establish how it will compensate the beneficiary.

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.