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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
and Immigration
Services**

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FILE: [Redacted]
LIN 06 146 50059

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 07 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:



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 Director, California Service Center, 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 for a new decision based on revised regulations. The director determined that the petitioner had failed to submit required evidence, and therefore the director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner is a Protestant Christian 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 missionary/member care pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition, because the petitioner had not demonstrated the beneficiary's means of support during that time.

In response to the certified decision, the petitioner submits a letter and copies of bank statements.

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 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 petition was filed on April 19, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

The beneficiary entered the United States on June 6, 2002, and therefore was in the United States throughout the two-year qualifying period. In a letter submitted with the initial filing, [REDACTED] of the petitioning church, stated:

[The petitioner] would like to have [the beneficiary] work as a permanent full time missionary with our church and Youth With A Mission (YWAM).

. . . [The beneficiary] has been working with Youth With A Mission in a ministerial capacity, in R-1 visa status, since June 6, 2002.

. . . In 1999 she was licensed as a Christian Missions Worker by [the petitioner], and she was ordained as a minister of the Gospel by [the petitioner] on July 13, 2002.¹ She continues to make this church her home base and gives regular reports of her missionary activities to the church. . . .

[The petitioner] would like to offer [the beneficiary] a full time position as a Missionary/Member Care Pastor. . . .

[The petitioner] will provide [the beneficiary] with a monthly salary of \$800 cash. In addition, we will also provide housing and utilities, the use of a vehicle and other miscellaneous compensation for a total value of at least \$14,000 per year.

The petitioner submitted copies of documents apparently submitted in support of an earlier nonimmigrant petition filed on the beneficiary's behalf. In an April 15, 2002 letter, [REDACTED] Worcester, South Africa, stated that the beneficiary's "church, friends and family members in South Africa and America have supported [the beneficiary] since 1993. This financial support will continue during her domicile in the United States of America." [REDACTED] added that the beneficiary "will not be taking up any other employment during the course of her stay in the USA."

In a letter dated May 9, 2002, [REDACTED] of YMAM in Weston, Colorado, stated: "We will take full responsibility for [the beneficiary's] accommodation, food and living expenses. . . . She will not have the opportunity to get an outside

¹ [REDACTED] reference to July 13, 2002 appears to have been a typographical error. A Certificate of Ordination reproduced in the record includes the year spelled out as "Two Thousand Three."

job, and will not receive a salary or remuneration in any form other than subsistence from a US source.” [REDACTED] did not identify the “US source” of the beneficiary’s support, and a letter from 2002 is not verifiable evidence that the beneficiary received such support in 2004-2006.

In a May 12, 2002 letter, [REDACTED] stated: “While [the beneficiary] is in the Park Rapids area [the petitioner] will provide living accommodations for her. A member of our congregation . . . will provide transportation to CO for her to fulfill her obligations with Youth With A Mission. She has demonstrated to us that she has adequate support for her personal expenses. She will not receive a salary from a U.S. source.”

On December 11, 2006, the director issued a request for evidence, instructing the petitioner to submit, among other things, “evidence that shows monetary payment . . . [and] evidence to show how the beneficiary supported himself [sic] during the two-year period.” In response, [REDACTED] stated: “Since 1992 [the petitioner] has had a church member who has been a full time volunteer with Youth With A Mission. . . . [The beneficiary] has been a member of [the petitioning] Church since 1998, and has been serving as a volunteer with Youth With A Mission.”

[REDACTED] of YWAM in Lebanon, Pennsylvania, stated that the beneficiary “is a volunteer worker, receiving no salary from Youth With A Mission. We do provide room, board and transportation to her. She is self-supporting for all her other personal expenses. She has not held any supplemental salaried employment during her time with us.” The beneficiary concurred, stating that she “received no salary, nor . . . held any supplemental employment,” but has received “gifts from family and friends.”

The director denied the petition on April 17, 2007, stating that, because the beneficiary “has been serving as a volunteer with Youth With A Mission . . . the evidence is insufficient to establish that the beneficiary has been performing full-time paid work” throughout the two-year qualifying period.

On appeal, [REDACTED] stated: “Our understanding is that neither the statute nor regulations stipulate an explicit requirement that the work experience must have been paid employment.”

While the appeal was pending, USCIS published new regulations, revising and replacing the former regulations at 8 C.F.R. § 204.5(m). The AAO remanded the proceeding to the director on December 10, 2008, for the director to allow the petitioner an opportunity to submit newly required evidence.

On February 4, 2009, the director notified the petitioner of several of the new evidentiary requirements in the revised regulations. Among other regulations, the director advised the petitioner of 8 C.F.R. § 204.5(m)(11), which 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.

The petitioner's response to the notice included the attestation required by 8 C.F.R. § 204.5(m)(7), a copy of the petitioner's constitution and other materials about the church, and information about intended future compensation as requires by 8 C.F.R. § 204.5(m)(10). The petitioner did not submit IRS documentation of salaried or non-salaried compensation, or financial evidence of the type described at 8 C.F.R. § 204.5(m)(11)(iii). Past and future compensation fall under different regulatory clauses, and the petitioner's assertions about arrangements for future compensation are not evidence of past compensation. The petitioner, in responding to the notice, did not explain the omission of evidence regarding the beneficiary's past compensation and material support.

The director denied the petition on May 31, 2009, stating that the petitioner "submitted no evidence of [the beneficiary's past] support" in response to the February 2009 notice, and that "[t]he only evidence previously submitted is a letter from State Bank stating that [the beneficiary] has maintained a bank account. However, the source of the funds is unclear."

In response to the certified denial notice, _____ states:

In the two years immediately preceding the [filing date], [the beneficiary] received no salary but was supported through the gifts of her family and friends. Since she was supported by gifts, there are not financial audits, etc. to document the gifts, however submitted with this letter are bank statements from [the beneficiary's] account which show that she maintained an adequate balance to sustain herself.

As described in the letter, the petitioner submitted copies of the beneficiary's bank statements from March 2004 through May 2006.

The director issued the February 2009 notice for the specific purpose of obtaining specific evidence required by the regulations. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). The same logic applies to responses to certified denials. The director specifically instructed the petitioner to submit "financial institution records" showing the beneficiary's material support during the 2004-2006 qualifying period, and the petitioner, at that time, did not submit them, explain their absence, or even mention their existence.

The director did not deny the petition based on a faulty finding that no documentation existed. Rather, the director denied the petition based on the petitioner's failure to submit requested evidence. The petitioner's subsequent submission of that evidence does not contradict or overcome the director's correct finding that the petitioner did not submit the evidence when asked to do so. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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 sustained that burden. Accordingly, the AAO will affirm the director's decision.

ORDER: The director's decision of May 31, 2009 is affirmed. The petition is denied.