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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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Services**

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FILE:

EAC 06 226 51107

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 14 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:

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 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 seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Act to perform services as the associate pastor of Christian Mission John 3:16 Assemblies of God Church in Passaic, New Jersey. The director determined that the petitioner had failed to provide sufficient evidence of qualifying prior employment.

As required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.4(b)(2), the director allowed the petitioner 30 days in which to submit a brief in response to the certified decision. To date, the record contains no further correspondence from the petitioner.

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 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 petitioner filed the petition on July 31, 2006. Therefore, the petitioner must establish that she was continuously performing qualifying religious work throughout the two years immediately prior to that date.

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

- (11) *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.

To establish her qualifying experience, the petitioner submitted a letter from [REDACTED] of Shekinah Pentecostal Church in the Dominican Republic, who stated that the petitioner “worked in our congregation from March 1, 2003 until July 15, 2006. . . . She worked 35 hours a week and was receiving a salary of \$4,000 RD per month.”

On December 11, 2006, the director instructed the petitioner to submit further documentation of her past work, including “evidence that shows monetary payment, such as pay stubs.” On March 9, 2007, the director issued a second notice, containing the same instructions. The petitioner responded to both notices, but neither response contained any documentation of compensation she received during the *2004-2006 qualifying period*.

The director denied the petition on July 11, 2007, because “the petitioner failed to submit the request[ed] evidence that shows the beneficiary received remuneration for her service as claimed.” On appeal, the petitioner submitted photocopies of pay receipts showing semimonthly payments of RD\$ 2,000 in April, May and June 2006. The petitioner stated that she did not submit them previously because they “just arrived now from [the] Dominican Republic.”

On November 26, 2008, while the appeal was pending, U.S. Citizenship and Immigration Services (USCIS) published substantially revised regulations at 8 C.F.R. § 204.5(m) relating to special immigrant religious workers. The AAO remanded the petition to the director on December 12, 2008, for consideration under the new regulations.

On May 8, 2009, the director advised the petitioner of new evidentiary requirements found in the revised regulations. The director notified the petitioner that the petition could not be approved unless the petitioner provided all of the required evidence. With respect to the petitioner's claimed prior experience, the petitioner submitted copies of previously submitted documents, but no new evidence to meet the evidentiary requirements of the new regulations.

The director denied the petition on July 16, 2009, stating that the petitioner failed to provide the required evidence of past compensation. As noted previously, the record contains no response to the certified denial.

8 C.F.R. § 204.5(m)(11) requires the petitioner to submit IRS documentation (or its foreign equivalent) to establish qualifying prior employment. The three months' worth of photocopied pay stubs that the petitioner has submitted do not meet this requirement, and the petitioner has not contested the director's latest decision.

We note an additional issue relating to the petitioner's claimed prior employment, beyond the issue of compensation. 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 record indicates that the petitioner's employment in the Dominican Republic ended on July 15, 2006, and that she was unemployed at the time she filed the petition. Therefore, setting aside any other issue regarding the beneficiary's claimed overseas employment, there was a break in the continuity of the petitioner's work during the two years immediately preceding the filing of the petition. Under 8 C.F.R. § 204.5(m)(4), such a break is disqualifying unless it meets all three of the following conditions:

- (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 interruption did not exceed two years, but the petitioner has not met the other two requirements. There is no indication that the beneficiary was still employed as a religious worker during the second half of July 2006. She had left not only her previous job, but the country in which that job was located,

and she claimed no subsequent employment in the United States. We note that, because the beneficiary was a B-2 nonimmigrant visitor at the time, any such employment in the United States would have been unauthorized and therefore non-qualifying, according to 8 C.F.R. §§ 204.5(m)(4) and (11).

The petitioner has also not shown that she was a member of her prospective employer's religious denomination. The alien must have been a member of the prospective employer's denomination throughout the two years immediately preceding the filing of the petition. In addition to the regulation quoted above, *see* section 101(a)(27)(C)(ii)(I) of the Act and 8 C.F.R. §§ 204.5(m)(5) and (7)(x).

The petitioner seeks employment at an Assemblies of God church, but she has not established, or even clearly claimed, that her former church in the Dominican Republic also belongs to the Assemblies of God denomination, or that she herself belonged to that denomination before she arrived in the United States less than two weeks before the petition's filing date. Therefore, the petitioner has not satisfied the above-cited provisions of both the statute and the regulations.

Also, 8 C.F.R. § 204.5(m)(7) requires an authorized official of the prospective employer of an alien seeking religious worker status to complete, sign and date an attestation providing specific information about the employer, the alien, and the terms of proposed employment.

After the director advised the petitioner of this requirement in May 2009, the petitioner submitted materials from the intending employer that address many, but not all, of the points that the above regulation requires. For example, the petitioner did not establish the number of religious worker petitions filed by her intending employer, as 8 C.F.R. § 204.5(m)(7)(v) requires. The absence of this required document from the record represents an additional basis for denial of the petition. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

The AAO will affirm the denial of the petition 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. The petitioner has not met that burden.

**ORDER:** The director's decision of July 16, 2009 is affirmed. The petition is denied.