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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

G1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 14 2010

EAC 06 150 52238

IN RE: Petitioner:
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:

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 is a Baptist 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 and musical director. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful work experience immediately preceding the filing date of the petition.

In response to the certified decision, the petitioner submitted a letter from a church official and various supporting documents.

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 21, 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 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.

On the Form I-360 petition, instructed to state the beneficiary's "Current Nonimmigrant Status," the petitioner wrote "Pastor," which is not a nonimmigrant status. The petitioner indicated that the expiration date of the beneficiary's nonimmigrant status was "Indefinite." There is, however, no indefinite nonimmigrant status for religious workers.

The record shows that the beneficiary entered the United States on April 21, 2005, meaning that the beneficiary was in the United States for one year of the two-year qualifying period. Visa documents show that the beneficiary entered the United States as a B-1 nonimmigrant visitor for business, "to go to New Jersey for a religious conference May 8 to 15, 2005." The beneficiary was permitted to remain in the United States until July 20, 2005. His B-1 nonimmigrant status did not authorize him to work for

any United States employer. Rather, he was admitted on the presumption that he was conducting business for his employer in Haiti.

[redacted] of [redacted] (the Holy Church of the Pilgrims), Haiti, stated that the beneficiary was ordained as a minister in April 1995, and since that time had served as the church's pastor. This letter attests to the beneficiary's employment in Haiti for the first year of the qualifying period. We note that a copy of the beneficiary's ordination certificate is dated January 1996.

In an October 21, 2006 letter, [redacted] of the petitioning church, stated that the beneficiary "will be officially appointed in his position as soon as he receives his employment authorization," at which time "[h]is salary will be $500.00/week." This suggests that the beneficiary had not yet begun working for the petitioning church. Weeks later, however, three officials of the petitioning church (including [redacted]) signed a joint letter on November 10, 2006, stating: "We currently give [the beneficiary] an allowance of $500.00 weekly." This indicates that the beneficiary's compensation (and, by implication, his employment) had already begun while the petition was pending.

The director denied the petition on August 5, 2008, for various reasons, including the petitioner's failure to submit adequate evidence of prior qualifying employment. The petitioner filed a timely appeal, which was still pending when USCIS published new regulations on November 26, 2008. The AAO remanded the petition to the director on December 16, 2008, for a new decision under the revised regulations.

On February 9, 2009, the director issued a request for evidence, instructing the petitioner to submit the newly-required evidence. Among other things, the director requested documentary evidence of the beneficiary's employment and compensation during the 2004-2006 qualifying period. The director also requested documentation of the beneficiary's nonimmigrant status since his entry into the United States.

In response, the petitioner submitted a list of paid employees that did not include the beneficiary, and [redacted] indicated that the petitioner had not employed any special immigrant or nonimmigrant religious workers during the previous five years. [redacted] stated that the beneficiary had been a "volunteer" at the petitioning church "since his arrival in New Jersey in 2005."

Regarding the beneficiary's nonimmigrant status, the petitioner resubmitted documentation showing the beneficiary's 2005 entry as a B-1 nonimmigrant. The petitioner did not submit any evidence showing that the beneficiary had any lawful nonimmigrant status after July 20, 2005.

A 2005 letter from officials of the beneficiary's former church in Haiti indicated that the beneficiary received a "monthly salary . . . of six thousand gourdes," but the petitioner submitted no documentation of these payments that would be equivalent to IRS documentation of compensation in the United States.

In a certified denial notice dated June 19, 2009, the director stated: "the petitioner was unable to submit any evidence to prove that the beneficiary has been performing religious work continuously and lawfully while in the U.S. for at least the two-year period immediately preceding the filing of the

petition." The director noted that the beneficiary is "currently out of status," his B-1 status having expired three months after he entered the United States (supposedly to attend a one-week conference).

In response to the certified decision, the petitioner's [redacted] stated that the petitioner worked in Haiti "until April 21, 2005," and that "[f]rom April 21, 2005 to April 20, 2006, he continued to perform the same activities in our church in New-Jersey [*sic*], USA. . . . [T]he church in general and its members in particular have committed to supporting [the beneficiary] by constant gifts, donations, and lodging."

The petitioner submits copies of various letters and documents, some previously submitted, relating to the beneficiary's work in Haiti. The record still does not contain evidence of his compensation in Haiti that is comparable to IRS documentation as 8 C.F.R. § 204.5(m)(11) requires.

Even more significantly, the petitioner has not disputed the director's finding that the beneficiary had no legal authorization even to be in the United States, let alone working for the petitioner, for much of the two-year qualifying period. The assertion that the beneficiary worked as a "volunteer," supported by "gifts," rather than as a salaried employee, does not shield the beneficiary from a finding of unauthorized employment. The Board of Immigration Appeals ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

Furthermore, after the beneficiary's B-1 nonimmigrant status expired on July 20, 2005, the beneficiary was not authorized to be in the United States at all, in which case no work he performed after that date could possibly have been authorized under United States immigration law.

The requirement that the beneficiary's past employment in the United States must have been authorized under immigration law is not optional or discretionary. If the petitioner cannot show that the beneficiary was authorized to work for the petitioner in 2005 and 2006, then USCIS cannot legally approve the petition. We will affirm the director's uncontested finding that the beneficiary was not continuously and lawfully employed as a religious worker throughout the two years immediately preceding the filing of the petition.

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 denial of the petition.

ORDER: The director's decision of June 19, 2009 is affirmed. The petition is denied.