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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE: WAC 09 062 50158 Office: CALIFORNIA SERVICE CENTER Date: **JAN 22 2010**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

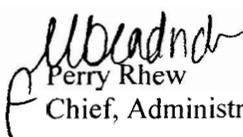
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:
[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
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 self-petitioner seeks classification 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 minister. The director determined that the petitioner had not established that he was qualified for the position.

On appeal, counsel alleges that “there was perhaps a predisposition” to deny this petition and that that “raises issues of fairness, justice, and equal opportunity, among others.” The petitioner, through counsel, 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).

With the petition, the petitioner submitted a copy of a September 5, 2008 letter from his prospective employer signed by [REDACTED], the parish administrator. [REDACTED] stated that the petitioner, “by virtue of his training and ordination,” conducts worship services according to the General Instruction on the Roman Missal and the celebration of the sacraments” and that “[o]nly a priest is authorized to perform these functions.” [REDACTED] also stated:

[The petitioner] was educated at the Facultad de Teología del Norte de España, Burgos, Spain and received a Masters in Theology. His seminary formation was conducted at Hogar de los Cruzados de Santa Maria, Burgos, Spain. Six additional years of education and formation occurred after ordination in Hogar de los Cruzados de Santa Maria in Valladolid, Spain, according to the formational plan of his order.

The petitioner provided a copy of an affidavit from the Chancellor – Secretary General of the Bishopric of Segovia attesting:

That [the petitioner] is a priest and member of the Secular Institute of St. Mary Crusaders. He is a permanent member of the clergy of this Bishopric of Segovia. At present, he has been assigned by his superiors to practice the pastoral ministry in the Diocese of Arlington, Virginia, U.S.A.

The petitioner submitted no other corroborative documentation of his education or ordination. The regulation at 8 C.F.R. § 204.5(m)(9) provides that the petitioner must submit:

Evidence relating to the qualifications of a minister. If the alien is a minister, the petitioner must submit the following:

(i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

In her March 4, 2009 request for evidence (RFE), the director instructed the petitioner to submit the documentation required by the above-cited regulation. In response, the petitioner provided a copy of a September 8, 2008 letter from [REDACTED] who identified himself as the local director of the Crusaders of Saint Mary Secular Institute and certified that the petitioner “is a consecrated member of the Institute” and was “a priest with good standing in the Catholic Diocese of Arlington.” According to counsel, this letter was “submitted to attest to [the petitioner’s] ordination on December 8, 1988 in Spain.” Nothing in the record, however, supported counsel’s assertion that the petitioner was ordained on December 8, 1988. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, the petitioner submitted a copy of his transcript from the School of Theology of Northern Spain and copies of the “Code of Canon Law” relating to “the formation of clerics,” “the enrollment, or incardination, of clerics,” and “the obligations and rights of clerics.” In addition, the petitioner submits a new document that counsel now asserts is evidence that the petitioner “is authorized by the Catholic Church because he was ordained on May 21, 1988 in Segovia, Spain after satisfactorily completing studies between 1979 and 1988.” [Emphasis omitted.] This statement is contrary to the claim made by counsel in response to the RFE that the petitioner was ordained on December 8, 1988. Furthermore, the translation accompanying the certificate of ordination submitted on appeal does not comply with the regulation at 8 C.F.R. § 103.2(b)(3) which provides that:

Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

Although the document is accompanied by a letter from [REDACTED] from the Diocese of Arlington in which he states that the ordination document “is an exact translation of the original,” he does not certify that the document is complete and accurate or that he is competent to translate from Spanish into English. Therefore, in addition to the above noted contradictions in counsel’s claims, this newly presented evidence is of no probative value without a proper translation.

Regardless, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). 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).

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 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

We note that counsel consistently references the regulation at 8 C.F.R. § 214.2(r), which governs nonimmigrant religious workers. Counsel asserts in his brief that the petitioner “is fully aware of the newly implemented regulations regarding the religious worker visa program.” Nonetheless, the petitioner failed to provide the documentation required by the regulation governing immigrant religious workers at 8 C.F.R. § 204.5(m) with his petition or in response to the director’s RFE.

The petition will be denied for the above stated reasons. 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.