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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [Redacted]
WAC 08 177 51905

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 22 2010**

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)

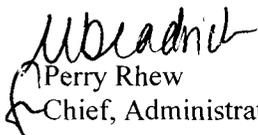
ON BEHALF OF PETITIONER:



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 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 its director of education. 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 and that any work he may have performed in the United States during the two years prior to filing the petition was in an authorized status.

On appeal, counsel states that the beneficiary worked as a missionary from December 2007 and June 2008. The petitioner submitted 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 has 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)(4) 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 has 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 June 9, 2008. Therefore, the petitioner must establish that the beneficiary was 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.

With the petition, the petitioner submitted a copy of the beneficiary's Form I-94, indicating that he entered the United States on December 12, 2007 pursuant to a B-2, nonimmigrant visitor's visa, valid until June 9, 2008. An alien who is present in the United States pursuant to a B-2 visa is not authorized to work in the United States. 8 C.F.R. § 214.1(e). The petitioner submitted no documentation to establish that the beneficiary received a change in his nonimmigrant status that would permit him to work in the United States. Accordingly, 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 May 28, 2008 letter submitted in support of the petition, the petitioner did not specifically address the beneficiary's prior work experience, but stated that he had "been a member and a [REDACTED] since 2000," and that the beneficiary "has been [a] member of the couples's [sic] minister [sic] for over three (3) consecutive years. He participated in the First International Congress of the Master Plan in November 2007." The petitioner submitted no documentation to corroborate any employment by the beneficiary during the two years immediately preceding the filing of the visa petition, either within the United States or prior to his admission as a B-2 nonimmigrant.

In denying the petition, the director noted that the petition was filed six months after the beneficiary entered the United States pursuant to a B-2 visa. The director further noted the petitioner's statement that the beneficiary had participated in the "First International Congress of the Master Plan in November 2007," and determined that the petitioner had "failed to explain the break in the continuous religious work" during the two years before the petition was filed.

On appeal, the petitioner states:

[The beneficiary] imparted instructional training . . . during the months of December 2007 – August 2008. [The beneficiary] a current member of [REDACTED] in Cali – Colombia was asked to help implement a new discipleship program (the Master's Plan). This training took place at [the petitioning organization].

Throughout the training period [the petitioner] provided [the beneficiary] with housing, meals and transportation through [REDACTED] their in-house residential program.

The petitioner submits a copy of a March 13, 2009 letter from [REDACTED] of the [REDACTED] in which he writes:

The purpose of the journey undertaken by [the beneficiary] as a missionary of the Church, to the United States, sharing the vision of THE MASTER PLAN at congregation at the Church of the Nazarene "The Good Shepherd" located in Hialeah, Florida, and disseminating and sharing the powerful message of the gospel; serving as support to this congregation, as it seeks to work without a team the results are limited, the work is heavy and influence to others is short. This mission does not have any financial compensation from the Church of the Nazarene "The Good Shepherd."

Since December 2007 to August 2008, the Church of the Nazarene "The Good Shepherd" has provided shelter, food, and transportation at the Home of the Nazarene, as well as he has receive[d] financial support through his family.

The petitioner also provides affidavits from three individuals who certified that they met the beneficiary in December 2007 and that he "has been the facilitator of both teaching God's word and the teaching of the Master Plan."

The petitioner submits additional documentation on appeal that counsel states is evidence that the beneficiary has worked with [REDACTED] since 2000. However, with the exception of an excerpt for the Manual of the Church of the Nazarene, all of the documents are in Spanish and are not accompanied by English translations as required by 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Counsel also asserts that the beneficiary's work in the United States was within the limitations of his B visa. Counsel refers to a Department of State cable of August 7, 2001, reprinted in 78 No. 31 Interpreter Releases 1315, which reminds visa offices that applicants for visas to perform missionary work in the United States may be eligible for a B-1 nonimmigrant visa for business pursuant to the Foreign Affairs Manual (FAM). We must note, however, that the beneficiary entered the United States pursuant to a B-2, nonimmigrant visitor for pleasure visa, and therefore does not fall within the parameters of the options allowed by the FAM.

The petitioner provided no documentary evidence to establish the beneficiary's employment prior to entering the United States. The petitioner submitted none of the documentation required by the regulation at 8 C.F.R. § 204.5(m)(11) or any similar documentation to establish that the beneficiary has worked continuously in a qualifying religious occupation for two full years immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary will be engaged in full-time employment or how it plans to compensate the beneficiary. We note that

the petition was filed prior to promulgation on November 26, 2008 of the new regulations governing special immigrant religious worker petitions. Nonetheless, the requirement that the petitioner establish its ability to compensate the beneficiary did not change. In its offer of employment, the petitioner stated that it would pay the beneficiary \$30,000 per year, plus medical insurance and provide a place to live. The regulation at 8 C.F.R. § 204.5(m)(2) provides that to be eligible for this preference visa classification, the alien must be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position. 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 its monthly checking account statements for November 2007 through March 2008. The petitioner provided no documentation that it has paid the beneficiary in the past and no documentation that it has sufficient funds set aside to meet its financial obligations, including the beneficiary's salary or any documentation of the housing that it would provide. The petitioner has not established that it has the ability to compensate the beneficiary at the proffered rate or that it offers the beneficiary full-time employment of at least 35 hours per week.

The petitioner also has not provided the attestation required by 8 C.F.R. § 204.5(m)(7), which requires the petitioner to attest, among other things, that the alien will be employed at least 35 hours per week, that the alien will not be engaged in secular employment, and that any salaried or non-salaried compensation will be paid to the alien by the attesting employer. As noted, the petition was filed prior to the effective date of the regulation, and the petitioner's failure to provide the attestation does not affect the outcome of this decision.

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.