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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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U.S. Citizenship
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 01 2010
WAC 07 247 54070

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:

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 employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

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 a minister. The director determined that the petitioner had not established that the beneficiary has been working continuously in a qualified religious occupation or vocation throughout the two years immediately preceding the filing of the visa petition.

The petitioner submits no additional documentation on certification.

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 certification is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) 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 had 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 August 22, 2007. Accordingly, the petitioner must establish that the beneficiary had been 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 [Internal Revenue Service] 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.

In an undated letter submitted in support of the petition, the petitioner stated that the beneficiary had been working for the petitioning organization since 2003. The petitioner further stated that the beneficiary worked 40 hours per week performing duties such as counseling, preaching and evangelizing. The petitioner submitted a copy of an IRS Form 1099-MISC, indicating that it paid the beneficiary \$4,181 in "other income" for the year 2005, and copies of "record of payments or compensations" for each month in 2005 on which the beneficiary acknowledged payment in varying amounts in each week of the month. The petitioner also submitted a copy of an IRS Form W-2, Wage and Tax Statement, indicating that it paid the beneficiary \$10,140 in wages in 2006, and copies of the beneficiary's employee earnings statement indicating that it paid the beneficiary \$195 per week in 2006 and 2007. The documentation does not reflect any other compensation provided to the beneficiary.

The petitioner provided copies of the State of California Employment Development Department (EDD) Form DE 3BHW, Quarterly Report of Wages and Withholdings for Employers of Household Workers, on which [REDACTED], doing business as the petitioning organization, reported wages paid to the beneficiary of \$2,535 per quarter in 2006 and the first two months of 2007. This is the same amount that the petitioner reported on the beneficiary's IRS Forms W-2. It is therefore unclear whether the beneficiary worked as a household worker or as a minister during 2006 and 2007. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner also provided a copy of the beneficiary's 2006 tax return listing for 2006. The listing indicates that the beneficiary reported \$6,257 in "rent/royalty/partnership/estate" income but did not report any wages or other employment income.

The director denied the petition, determining that the evidence indicated that the beneficiary worked only part time and that it was unclear as to the capacity in which she worked. The petitioner appealed the decision, stating that the beneficiary "worked full time for the ministry between August 2005 to August 2007." The petitioner also alleged for the first time that it provided the beneficiary with room and board in addition to her salary. The petitioner provided a copy of a month-to-month rental agreement which indicated that [REDACTED], who is identified in the petitioner's documentation as its director, leased an apartment on behalf of the petitioner for use by

the beneficiary. The agreement, dated July 12, 2005 and effective on August 1, 2005, described the rental property as an apartment complex. The lease, however, does not identify the complex or the number of the apartment leased. Further, the address on the lease is the same as that of the petitioning organization. The petitioner also provided copies of rental receipts in the name of [REDACTED] from August 2005 to August 2007. The receipts also do not identify the apartment complex or apartment number and identifies the rental address as that of the petitioner.

The petitioner submitted a June 30, 2005 employment agreement, in which it agrees to pay the beneficiary a weekly salary, and provide her with “Board & Room, Clothing, Food, toiletries and anything more that is need[ed] for fulfill [sic] your personal needs and accommodations.” The petitioner provided no documentation of any other compensation provided to the beneficiary.

Pursuant to requirements under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), the United States Citizenship and Immigration Services (USCIS) issued new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: “All cases pending on the rule’s effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information.” 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). In keeping with this requirement, the AAO remanded the petition to the director on December 15, 2008, to give the petitioner an opportunity to meet the new requirements.

In response to the director’s Notice of Intent to Deny (NOID) issued following the AAO’s remand, the petitioner stated that the beneficiary receives a compensation package of \$1,250 per month in a housing allowance and \$1,160 in wages. The petitioner submitted copies of records of “payments or compensation” on which the beneficiary acknowledged receipt of payments in 2008 and 2009. However, the petitioner submitted no other documentation of the beneficiary’s work during the two-year qualifying period.

The director erred in determining that the petitioner must establish that the beneficiary was engaged in full-time employment as a minister during the qualifying period and we withdraw this statement. Nonetheless, the petitioner has provided insufficient evidence to establish that the beneficiary was continuously employed as a minister throughout the two-year period immediately preceding the filing of the visa petition.

First, the petitioner’s California State EDD Forms indicate that the petitioner reported wages for the beneficiary as a household worker instead of as a minister. The petitioner provided no documentary evidence to explain this inconsistency. *Matter of Ho*, 19 I&N Dec. at 591-92. Second, the petitioner did not initially allege that it provided the beneficiary with compensation that included other than a weekly salary. However, on appeal and in response to the director’s NOID issued after certification, the petitioner alleged that it also provided the beneficiary with everything she needed, including food, lodging and clothing. The petitioner provided no documentation that it provided the beneficiary with food or clothing. Going on record without

supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Third, while the petitioner claimed to pay for the beneficiary's housing, the lease agreement, which is allegedly for an apartment in an apartment complex, does not identify the name of the complex or the apartment rented on behalf of the beneficiary. Furthermore, the address listed as the rental address is that used by the petitioner.

Finally, the record reflects that the beneficiary was not in a lawful immigration status during the period that she worked for the petitioning organization. In response to the RFE, the petitioner stated that the beneficiary had "no legal status" in the United States. The regulation at 8 C.F.R. § 204.5(m)(11) provides that qualifying experience acquired while in the United States must have been authorized under United States immigration law. Accordingly, any work performed by the beneficiary in the United States in a "no legal status" interrupts the continuity of her work experience for the purpose of this visa petition.

The petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The AAO will affirm the certified denial 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 sustained that burden.

ORDER: The director's decision of July 31, 2009 is affirmed.