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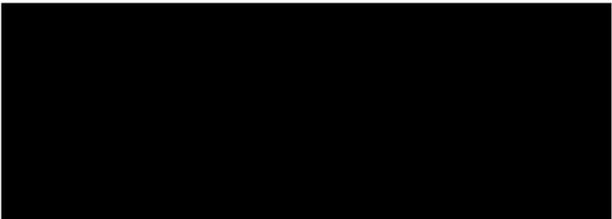
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: WAC 08 200 51171 Office: CALIFORNIA SERVICE CENTER Date: **MAR 16 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:

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, 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 in a clerical position. The director determined that the petitioner had not established that it is a bona fide nonprofit religious organization, that the position qualifies as that of a religious occupation, that the beneficiary has been working continuously in a qualified religious occupation or vocation for two full years immediately prior to the filing of the petition, and how it intends to compensate the beneficiary.

The petitioner submits a letter and 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 first issue on appeal is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

Tax-exempt organization means an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code [IRC] of 1986 or subsequent amendments or equivalent sections of prior enactments of the [IRC].

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the [IRS] establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the IRC of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner submitted no documentation with the petition to establish that it is a bona fide nonprofit religious organization. In response to the director's November 21, 2008 request for evidence (RFE), the petitioner stated that it was a nonprofit organization but provided no documentation from the IRS to confirm its nonprofit status or to establish the religious nature of its activities. 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)).

On appeal, the petitioner submits a copy of an October 20, 1972 letter from the IRS to the Church of God in Cleveland, Tennessee, granting that organization a group tax exemption under section 501(c)(3) of the IRC. The petitioner, however, submitted no documentation that it is covered under the group exemption granted to the Church of God.

Accordingly, the petitioner has failed to establish that it is a bona fide nonprofit religious organization for purposes of this petition.

The second issue on appeal is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The petitioner submitted no documentation regarding the proffered position with the petition. In response to the RFE, the petitioner, through its [REDACTED] stated:

[The beneficiary] is an usher and is also a member of the Finance Committee of the church. [He] has been acting in these capacities for 4 years and is a candidate for a clerical position at the church. The position currently offers a weekly salary of \$150.

The petitioner did not identify the title or outline the duties associated with the proffered position. In denying the petition, the director determined that the duties of the proffered position do not relate to a traditional religious function and that the regulation clearly excluded clerical personnel from the definition of religious worker. On appeal, the petitioner states that the duties of the position include "reconciliation of financial records, filing and other clerical tasks as required."

As discussed by the director, the regulation excludes from the definition of religious worker those positions that are primarily administrative and those that are support positions. The petitioner did not allege that the duties of the proffered position primarily relate to a traditional religious function and is recognized as a religious occupation within its denomination. The petitioner also did not allege that the position is primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of its denomination.

The petitioner has not established that the proffered position is a religious occupation within the meaning of the regulation.

The third issue 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 July 11, 2008. 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 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 response to the RFE, the petitioner stated that the beneficiary had been serving as an usher and member of the finance committee of the church and "is a candidate for a clerical position." The petitioner stated that the clerical position would be compensated at the rate of \$150 per week. However, it provided no information about the beneficiary's duties as an usher or a member of the finance committee or that either of these duties is recognized as religious occupations within the meaning of the regulation. The petitioner submitted no additional documentation on appeal regarding the beneficiary's prior employment.

The petitioner provided a copy of an I-94, Departure Record, indicating that the beneficiary entered the United States on February 18, 2002 pursuant to a B-1, nonimmigrant visitor's visa, for an authorized period of stay until May 17, 2002. The petitioner acknowledged on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary was in an "overstay" status. Accordingly, any work performed by the beneficiary in the United States during the

qualifying period interrupts the continuity of his work experience for the purpose of this visa petition. 8 C.F.R. § 204.5(m)(4).

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 fourth issue on appeal is whether the petitioner established how it intends to compensate the beneficiary.

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 stated that it would pay the beneficiary \$150 per week for his services as a clerical worker. The petitioner provided no documentation that it has compensated the beneficiary or an individual in a similar position in the past. The petitioner provided a “Leaflet of poll of the PAE (ACP)” for the period ending October 30, 2004. The document indicates that as of that date, the organization had an income of \$25,000, had a balance of \$40,000 at “the end of the association year” and property valued at \$30,000.

We note that the document is dated four years prior to the filing date of the petition. Therefore, it is not probative evidence of how the petitioner intends to compensate the beneficiary in the current position. Additionally, the petitioner provided none of the documentation required by the above-cited regulation. The petitioner has failed to establish how it intends to compensate the beneficiary.

Additionally, we note that the petitioner has not provided the attestation required by the regulation at 8 C.F.R. § 204.5(m)(7).

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 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.