

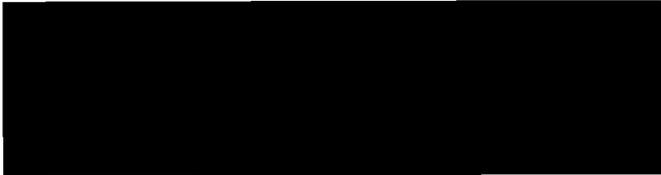
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 18 2010**
WAC 08 242 51713

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 as a religious instructor. The director determined that the petitioner had not established that the position qualifies as that of a religious occupation.

The petitioner 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).

The issue presented on appeal is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) 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.

In its August 20, 2008 letter submitted in support of the petition, the petitioner stated:

Due [to] the tremendous increase in our congregation and interest in religious studies, the Church has grown. We will continue [to] require the services of [the beneficiary] as a religious instructor to assist our Pastor, conducting bible classes, organizing prayer[] groups, consolidating new believers and to provide counseling and religious orientation, helping to other [sic] congregation to establish[] the Bible studies activities and projects to attract attention to and encourage active participation in the programs.

The position is a demanding one requiring the skills in religious life, vocation and five years of experience as a religious instructor.

The petitioner also stated that the beneficiary's qualifications "surpass the minimum requirements that we have set for this position." In a separate letter of the same date, [redacted] the petitioner's pastor, stated that the beneficiary had been working 40 hours per week as a volunteer and that the petitioner was now "prepared to offer him a position with a starting wage of \$16,000[] annually plus free medical service."

In a request for evidence (RFE) dated January 16, 2009, the director instructed the petitioner to:

Provide a detailed description of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function.

In response, the petitioner repeated the above statements regarding the duties of the position and the five years of experience required by the organization. The petitioner, however, submitted no additional documentation to establish that the position of religious instructor is recognized as a

religious occupation within its denomination and are primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of its denomination. In denying the petition, the director stated that the petitioner had not submitted its bylaws, letters from authorized officials of its denomination or any other documentary evidence that the position is defined and recognized by its governing body and that the position is traditionally a permanent, salaried occupation within the denomination.

On appeal, the petitioner submits a copy of a job description, its articles of incorporation and a copy of its bylaws. While article eight of the articles of incorporation provide that the petitioner may establish educational departments with officers and subordinate administrators, the petitioner submitted no documentation that it has established such departments or that the beneficiary works within one of the departments. Neither the bylaws nor the articles of incorporation reference a position of religious instructor. The position description appears tailored specifically for the beneficiary. The petitioner submitted no documentation to reflect that the position of religious instructor is recognized as a religious occupation within its denomination.

The petitioner has, therefore, failed to establish that the position of religious instructor is a religious occupation as defined by the regulation.

Beyond the decision of the director, the petitioner has not 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 September 10, 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 his August 20, 2008 letter submitted in support of the petition, [REDACTED] stated that the beneficiary had performed the duties of the position on a volunteer basis and that the petitioner was "now prepared" to offer him a starting salary of \$16,000. The petitioner stated that the beneficiary had been working in this capacity since 1997. In a February 6, 2009 letter, submitted in response to the RFE, [REDACTED] stated that the beneficiary had "been employed" by the petitioner since 2003, as the sacristan. [REDACTED] also stated that the petition had "one paid ministry" and approximately 15 volunteers.

In another letter also dated February 6, 2009, [REDACTED] stated that the beneficiary "has been working full time, 40 hours per week. To the present he is receiving an annual base compensation in

the amount of \$14,400 also free medical service.” The petitioner submitted copies of a 2008 IRS Form W-2 for [REDACTED] indicating that he was the “one paid ministry” within its organization. The petitioner, however, submitted no documentation that the beneficiary worked during the qualifying period. Further, it provided contradictory statements regarding the beneficiary’s work history. [REDACTED] initially stated that the beneficiary worked in a voluntary capacity with the petitioning organization. However, in response to the RFE, [REDACTED] stated that the beneficiary had “been employed” as sacristan by the petitioner since 2003. 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 record also does not establish that the beneficiary worked in an authorized status in the United States. The record reflects that the beneficiary last entered the United States on June 2, 2007 as a B-2 visitor pursuant to a border crossing card. The card clearly indicates that the beneficiary was not authorized to work in the United States. Any work performed in the United States in an unauthorized status interrupts the continuous work experience required by the regulation. 8 C.F.R. § 204.5(m)(11).

Further, even assuming that the beneficiary was authorized to work in the United States, which he was not, his volunteer work during the qualifying period is not qualifying work experience for purpose of this visa petition. The only religious workers who may qualify without an actual salary or in-kind support as evidence of their prior employment are those workers in an established missionary program under an R-1 or B-1 nonimmigrant visa. In this instance, the record does not establish that the beneficiary was in a missionary program or that he was an R-1 or B-1 nonimmigrant. *See* 72 Fed. Reg. 20442, 20446 (Apr. 25, 2007).

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

The petitioner has also failed to establish how it intends to compensate the beneficiary.

With the petition, the petitioner stated that it would compensate the beneficiary in the amount of \$16,000 plus medical care. In response to the RFE, the petitioner stated that the beneficiary’s compensation would be \$14,400 plus free medical care.

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 submitted none of the documentation required by the above-cited regulation and no other documentation to establish that it has paid the beneficiary any compensation in the past or has previously compensated an individual in a similar position. Accordingly, the petitioner has failed to establish how it intends to compensate the beneficiary.

Finally, the petitioner has not submitted the attestation required by the regulation at 8 C.F.R. § 204.5(m)(7):

An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. If the alien is a self-petitioner and is also an authorized official of the prospective employer, the self-petitioner may sign the attestation. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) The number of members of the prospective employer's organization;
- (iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;
- (iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;
- (vii) That the alien will be employed at least 35 hours per week;

- (viii) The specific location(s) of the proposed employment;
- (ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;
- (x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;
- (xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
- (xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

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 burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.