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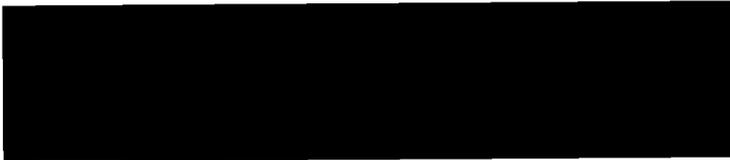
FILE: WAC 09 035 51769 Office: CALIFORNIA SERVICE CENTER

Date: **MAR 26 2018**

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:



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

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 pastor. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

On appeal, counsel asserts that the beneficiary's "husband works hard and earns [sic] to support their family. She is therefore able to work for God fulltime [sic] without worry for the daily expense of her family." Counsel 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 issue presented on appeal 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 November 20, 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 [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 its August 24, 2008 letter submitted in support of the petition, the petitioner stated that the beneficiary had “been serving in our church as the leader of worshiping since 2000” and that “she was ordained as a pastor on June 8th in 2008 in our church after achieving a theological degree” as “an assistant pastor.” The petitioner provided two photographs purportedly depicting the beneficiary preaching. However, the petitioner provided no other documentary evidence of the beneficiary’s work during the two-year period immediately preceding the filing of the visa petition.

In response to the director’s February 20, 2009 request for evidence (RFE), the petitioner indicated that the proffered position was as a “volunteer without salary or compensation.” In his April 1, 2009 letter submitted with the petitioner’s response, counsel stated that the beneficiary had been working as a volunteer since she joined the church and that her husband supported her financially. In an April 1, 2009 letter, [REDACTED] stated that none of the “three board directors, three executive officers, and six deacons” were compensated for their services to the church.

The petitioner provided copies of what counsel identifies as flyers that show the beneficiary’s “duty and performance during worship with the church.” Although the record contains a certificate of translation, it is unclear which of these documents, if any, to which the certification pertains. The submission of a single translation certification that does not identify the document it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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. 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.

The petitioner also provided copies of the beneficiary’s unsigned and undated IRS Form 1040, U.S. Individual Income Tax Return, for the years 2006 and 2007, that she filed jointly with her husband. The returns show that the beneficiary’s husband was self-employed and reported total income of \$22,555 in 2006 and \$24,825 in 2007.

The director determined that as the beneficiary worked as a volunteer, “USCIS cannot count the two-year work experience because the beneficiary had to [be] employed and receiving salary for her services in the religious occupation.” On appeal, counsel states:

[The beneficiary’s] husband works hard and earns to support their family. She is therefore able to work for God fulltime without worry for the daily expense of her family. She dedicated her talents, her efforts, and her time to work for God. She doesn’t care about receiving money from her working because of God’s Calling.

The point is whether the people working for God’s Calling must be paid generally. We understand they may receive some money to cover accommodations and to survive themselves. But for many churches’ people they don’t request to be paid when they serve the God. On the other hand, some church’s people have some source of income from their families. They don’t worry about [] their cost of living. They work for God’s Calling for free. It is very popular in the United States.

On November 26, 2008, as required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), U.S. Citizenship and Immigration Services (USCIS) promulgated a rule setting forth new regulations for special immigrant religious worker petitions. 73 Fed. Reg. 72276 (Nov. 26, 2008). Supplementary information for the final rule, as it relates to self-support, stated:

Compensation Requirements

USCIS proposed to add a requirement that the alien’s work, under both the immigrant and nonimmigrant programs, be compensated by the employer. Specifically, the rule proposed amending the definition of “religious occupation” to require that an occupation be “traditionally recognized as a compensated occupation within the denomination.” Commenters were concerned that the proposed rule would exclude many religious workers who do not receive salaried compensation, but may receive stipends, room, board, or medical care, or who may rely on other resources such as personal savings, rather than salaried or non-salaried compensation.

In response to the commenters’ concerns, USCIS is clarifying that compensation can include either salaried or non-salaried compensation. Under the Internal Revenue Code, non-salaried support, such as stipends, room, board, or medical care, qualifies as taxable compensation unless specifically excluded.

* * *

Several commenters stated that the proposed compensation requirement would exclude programs that traditionally utilized only self-supporting religious workers

from participating in the R-1 visa program. The comments noted that religious workers who are self-supporting receive neither salaried nor non-salaried compensation; instead, they may rely on a combination of resources such as personal or family savings, room and board with host families in the United States, and donations from the denomination's local churches. Additionally, the comments noted that self-supporting religious workers are currently admitted under the R-1 visa program. In response, the final rule will continue to allow these aliens to be admitted under the R-1 visa classification. USCIS will, however, to preserve its ability to prevent fraud, permit self-supporting religious workers only under very limited circumstances, and, consistent with other provisions of the final rule, require specific types of documentation.

The change provides that if the nonimmigrant alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work within the organization, which is part of a broader, international program of missionary work sponsored by the denomination.

USCIS again notes that the religious worker visas are not the exclusive means by which an alien may be admitted to the United States to perform self-supported religious work, including missionary work. Current regulations specifically provide for the admission of missionaries under the general visitor for business visa.

73 Fed. Reg. at 72281-72282. *See also* Fed. Reg. at 72278.

As specifically provided for in the final rule, the only religious workers who may rely on self-support rather than 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 petitioner was in a missionary program or that he was an R-1 or B-1 nonimmigrant. Instead, as previously discussed, the record indicates that the petitioner last entered the United States on December 26, 2003 as a B-2 nonimmigrant visitor for pleasure and obtained a subsequent extension of that status from June 24, 2004 to December 22, 2004. The petitioner's voluntary work in the United States is not qualifying. As indicated in the supplementary information for the proposed rule:

USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program.

72 Fed. Reg. 20442, 20446 (Apr. 25, 2007).

Documentation submitted by the petitioner consisted only of the beneficiary's unsigned federal tax returns. On appeal, the petitioner submits an unsigned and undated letter purportedly from the beneficiary's husband who states that he provides the financial support for the family. The petitioner provided no other verifiable documentation of the family's income.

Additionally, the record reflects that the beneficiary was not in a lawful immigration status during the period that she worked for the petitioning organization. Accordingly, any work performed by the beneficiary in the United States interrupts the continuity of her work experience for the purpose of this visa petition. 8 C.F.R. § 204.5(m)(4)

In response to the RFE, the petitioner provided copies of the beneficiary's visa, which showed that she was approved for entry into the United States as a B1/B2 visitor for business or pleasure. The visa was valid from March 10, 2000 to March 9, 2005. The petitioner also submitted a copy of the beneficiary's Form I-94, Departure Record, indicating that she entered the United States on June 8, 2000 for an authorized period of stay to December 7, 2000. Counsel stated in his letter submitted with the RFE response that the beneficiary was a derivative beneficiary under her husband's asylum application, which had been denied, and that the beneficiary was currently in removal proceedings. The petitioner provided no documentation that the beneficiary has been authorized to work in the United States. Therefore, any work by the beneficiary during the qualifying period was in an unauthorized status.

The petitioner has therefore failed to establish that the beneficiary engaged in any qualifying work while in the United States and thus has failed to establish that she worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary seeks to enter the United States to work in a religious occupation or vocation or that she will be engaged in a full time position. The regulation at 8 C.F.R. § 204.5(m)(2) provides that 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 petitioner stated that the proffered position carries no salary or other compensation. Accordingly, the position does not qualify as a religious occupation or vocation as defined by the regulation.

Additionally, in its letter of August 24, 2008, the petitioner stated that the beneficiary was ordained as a pastor on June 8, 2008 and had been serving as an assistant pastor since that time. The petitioner stated that the beneficiary leads a "praying group and is in charge of the coordination of our annual convention." However, it provided no other information about the beneficiary's duties.

In his April 1, 2009 letter, [REDACTED] summarized the beneficiary's duties as:

- Leading the worship team and providing worship and accompaniment services every Sunday;
- Hosting and Coordinating church services every Sunday;

- Providing prophetic ministry in the church every Sunday;
- Leading the bible study group and providing teaching service to the group every Thursday;
- Providing assistance to the chief pastors in preparing Sunday services in the church;
- Providing teaching services in the church if the chief pastors are absent;
- Coordinating annual church conventions

Most of the duties outlined by [REDACTED] are performed on Sunday at the church. The facilities use contract with Bethel Lutheran Church for the period January 1, 2008 through December 31, 2008 reflects that the petitioner had access to the church facilities for only a five-hour period on Sunday. The only other regular duty that the beneficiary apparently performs is leading a bible study group on Thursday. Therefore, the petitioner has failed to establish that the beneficiary will be engaged in a religious occupation or vocation for an average of 35 hours per week.

Furthermore, 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 the proffered position was not compensated and provided no documentation of its financial position. Accordingly, it has failed to provide documentation that meets the requirements of the above-cited regulation.

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.

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ORDER: The appeal is dismissed.