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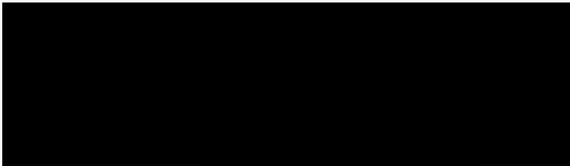
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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MAY 06 2010

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:  
WAC 09 012 51857

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 Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a church of the African Methodist Episcopal denomination. 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 maintenance worker. The director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, or that it is able to pay the beneficiary's salary.

On appeal, the petitioner submits a letter from its pastor.

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).

Two stated grounds for denial are closely interrelated. Specifically, the nature of the beneficiary's intended duties, and the time he is to spend on such duties each week. Both of these issues directly relate to the position in which the petitioner seeks to employ the beneficiary. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(2) requires that the beneficiary must:

Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:

- (i) Solely in the vocation of a minister of that religious denomination;
- (ii) A religious vocation either in a professional or nonprofessional capacity; or
- (iii) A religious occupation either in a professional or nonprofessional capacity.

The 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.

The petitioner filed the petition on October 17, 2008. In a letter accompanying the initial filing, Rev. [REDACTED] pastor of the petitioning church, provided general information about the beneficiary’s work:

He has direct contact with all of our members of our Church School . . . and with our active senior adult ministry. . . .

More specifically, [the beneficiary] assists the [church’s] Seniors in all aspects of their programming which often includes planning and sometimes preparing special meals, assisting with providing special needs to the seniors, providing transportation to help administer to those in the nursing homes, or rehabilitation center, and he is always on call for those individuals who are hospitalized. The home visits to our sick and shut-ins is also an ongoing task for him. . . .

[The beneficiary] was also elected to the position of Trustee. . . . His responsibilities here include but are not exclusive to attending to the temporal concerns of the church,

guarding all real estate when authorized to do so, and making improvements upon the property or real estate. He is also required to be a member of the Church Quarterly conference and answerable to that body for any official conduct.

did not specify the beneficiary's job title or provide many details about the exact nature of the beneficiary's specific duties. stated that the beneficiary "works more than what we pay him for as his hours often exceed the normal workday," but she did not specify what the beneficiary's "normal workday" was.

On February 6, 2009, the director instructed the petitioner to provide the beneficiary's job title and "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" (emphasis in original). The director further instructed the petitioner to "explain how the duties of the position relate to a traditional religious function."

In response, the petitioner submitted a copy of previous letter and two unsigned statements. The first statement concerned the duties of church trustees:

The Trustees are responsible for managing all temporal concerns of the church. They shall guard for the Connection all real estate, churches, parsonages, schools, and any other property obtained by the local church. They shall make improvements upon the property or real estate when authorized to do so by majority of the legal members of the church. They shall secure, by purchase or hire, a house for the pastor's family and also comfortably furnish it. They shall pay the moving expenses of the pastor and family from their previous assignment.

There is no indication that trustees receive any compensation for their work as trustees, or that the duties of a trustee occupy a substantial amount of time each week. The second statement lists the beneficiary's job title as "Maintenance" and reads, in part:

The Maintenance position at [the petitioning] Church is a part-time job. . . .

The job requires:

- a. some physical work – moving chairs, tables, boxes, pews and other furniture
- b. sweeping, vacuuming, dusting, mopping, emptying trash cans
- c. cleaning the bathrooms
- d. replacing paper towels and toilet tissue
- e. cleaning after events that are sponsored by the church

In summary to keep the Church, Office, Classrooms, and Fellowship Hall clean. . . .

The time is approximate[ly] twenty (20) hours per week.

The pay is \$565.00 per month.

The petitioner also submitted an organizational table and payroll documents, which we will discuss in the context of the appeal.

The director denied the petition on May 30, 2009, in part because the job offer was clearly part-time, whereas 8 C.F.R. § 204.5(m)(2) requires full-time employment, and also because the regulatory definition of “religious occupation” at 8 C.F.R. § 204.5(m)(5) specifically excludes janitors and maintenance workers.

On appeal from the director’s decision, [REDACTED] evidently [REDACTED] successor as pastor of the petitioning church, stated:

[The beneficiary] has served in several capacities; member of the Official Board, Church School, Male Chorus, Mass Choir and Married Couples Ministry. During the past eight years [the beneficiary] has had several roles and responsibilities but his most important role is that of church Trustee and Intercessory Prayer minister. . . . It is considered an honor and brings to it a sense of deep responsibility to serve as a Trustee in the African Methodist Episcopal Church. As pastor of [the petitioning church] I am committed to the success of [the beneficiary] and will recommend he become a licensed Exhorter at our Quarterly Conference.

The petitioner had previously submitted an organizational table that lists 14 names under “Trustees,” 32 names under “Youth Dept.,” 11 names under “Prayer Min.,” and dozens more names under a total of 18 categories. A handwritten annotation indicates that the petitioning church has 350 members, and clearly a large percentage of those members serve in one or more capacities as shown on the table. Payroll documents show only five to seven paid employees at any one time, which indicates that the vast majority of people who hold some sort of church office does so as volunteers rather than paid employees. Because the trustees outnumber paid employees by at least two to one, we can infer that the position of trustee is not a paid occupation in and of itself.

[REDACTED] asserts that the beneficiary’s role as a trustee is the beneficiary’s “most important role” at the church. This assertion is consistent with the director’s finding that the beneficiary’s paid role as a part-time maintenance worker lacks religious significance. The beneficiary undertakes some religious duties as a volunteer member of the congregation, but the same is true of a hundred or more others at the same church. The USCIS regulation at 8 C.F.R. § 204.5(m)(2) clearly limits eligibility to aliens in “compensated position[s].” Simply being an active member of a church is not a religious occupation and cannot qualify an alien for classification as a special immigrant religious worker.

The petitioner, on appeal, did not directly address the director’s finding that the petitioner has offered the beneficiary only a part-time position, which falls well short of the required 35 hours per week. The

general assertion that the beneficiary often works beyond his scheduled hours cannot suffice to rebut the director's finding in this regard.

For the reasons discussed above, we agree with the director's finding that the beneficiary's part-time maintenance position does not qualify as a religious occupation, and that the petitioner has not extended a qualifying offer of full-time employment.

The remaining ground for denial concerns the beneficiary's compensation. The USCIS regulation at 8 C.F.R. § 204.5(m)(10) reads:

*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.

As noted elsewhere in this decision, the petitioner has offered the beneficiary a salary of \$565 per month. In the February 2009 request for evidence, the director instructed the petitioner to submit "IRS [Internal Revenue Service] documentation, such as IRS Form W-2 or certified tax returns." IRS Form W-2 Wage and Tax Statements indicate that the petitioner paid the beneficiary \$2,100 in 2006 and \$6,704.50 in 2008. The record contains no IRS documentation from 2007, but copies of pay statements indicate that the petitioner paid the beneficiary \$525 per month that year.

In denying the petition, the director acknowledged the petitioner's submission of tax and payroll documentation, but stated: "the petitioner failed to submit evidence that would pertain to the petitioner's ability to pay" the beneficiary's salary. The petitioner does not address this issue on appeal.

Given the petitioner's acknowledged submission of tax and payroll documentation, it is not clear how the director concluded that the petitioner has not established its ability to compensate the beneficiary. The petitioner's submission of IRS documentation showing past compensation falls within the regulation at 8 C.F.R. § 204.5(m)(10), and the beneficiary's documented 2008 compensation was only \$75.50 short of the beneficiary's proposed annual compensation.

There are occasions when the facts of a particular petition require the petitioner to submit evidence that goes beyond the letter of the regulations. The regulations spell out minimum, not maximum, evidentiary requirements, and the director must determine on a case-by-base basis whether circumstances require more information and/or evidence. 8 C.F.R. § 214.2(r)(16) authorizes the director to verify the petitioner's claims through any means determined appropriate by USCIS, and 8 C.F.R. § 103.2(b)(8)(iii) states that the director may request more information or evidence if the

required initial evidence does not establish eligibility. In such instances, the director may request very specific evidence and deny the petition if the petitioner fails to submit such evidence.

When the director requests a specific document, or material from a very narrow, specified range of evidence, then the petitioner's failure to submit the requested evidence is a valid basis for denial under 8 C.F.R. §§ 103.2(b)(12) and (14). Here, however, the director requested a broad range of evidence (specifically "IRS documentation") and the petitioner made a good-faith effort to comply with that request. Among other things, the petitioner submitted copies of IRS Forms W-2, which 8 C.F.R. § 214.2(r)(11)(i) specifically identifies as acceptable documentation.

The director's finding, as written, cannot stand, and we withdraw that finding (although the denial remains in effect, for other reasons already discussed). A related issue of greater concern is that the USCIS regulation at 8 C.F.R. § 204.5(m)(7)(xii) requires the prospective employer to attest that it 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. The proposed level of compensation – \$565 per month, or \$6,780 per year – does not appear to be sufficient to meet this standard.

Additional issues are evident from review of the record. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

On November 26, 2008, while the petition was pending, USCIS published new regulations that introduced new documentary requirements and substantially revised others. As mentioned previously, 8 C.F.R. § 204.5(m)(7) requires the submission of an attestation from the intending employer. The record does not contain this required material.

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

(11) *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.

The petitioner did not submit IRS documentation of the beneficiary's 2007 compensation. Furthermore, on the Form I-360 petition, instructed to list the beneficiary's "Current Nonimmigrant Status," the petitioner wrote "seeking adjustment under Religious Worker section." Seeking immigration benefits does not automatically convey lawful nonimmigrant status. The record, therefore, contains no evidence that the beneficiary was in lawful nonimmigrant status during the two-year qualifying period, or that his past work for the petitioner was authorized under United States immigration law.

If the above documentary omissions were the only problems with the record, then the petition could not be denied until after the petitioner has had the opportunity to submit the missing evidence. *See* 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). It is clear, however, that the director's decision rested largely on regulatory provisions included in both the old and new versions of the regulations, most significantly the nature of the beneficiary's janitorial and maintenance work for the petitioner. Such work is non-qualifying, both under the former regulation at 8 C.F.R. § 204.5(m)(2) and the new regulation at 8 C.F.R. § 204.5(m)(5). Therefore, the petition could not be approved under either the old or new version of the regulation, and it would serve no constructive purpose for us to request, now, the required attestation and IRS documentation from 2007. The submission of those materials would not make the petition approvable.

The AAO will dismiss the appeal 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 appeal is dismissed.