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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
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FILE: [REDACTED] WAC 08 096 50132

Office: CALIFORNIA SERVICE CENTER Date:

MAY 06 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 Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter to the director for consideration under new regulations. The director again denied the petition and certified the decision to the AAO for review. The AAO will affirm the denial of the petition.

Part 1 of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, identifies [REDACTED] as the petitioner. Review of the petition form, however, indicates that the alien is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any church official, but by the alien himself. Thus, the alien, and not the church, has taken responsibility for the content of the petition.

The self-petitioner seeks classification 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 he had worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The petitioner submits a letter and 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 he 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 he worked 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 February 28, 2008. Accordingly, the petitioner must establish that he 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 a letter submitted in support of the petition, the pastor of the prospective employer stated that the petitioner had worked at the [REDACTED] prior to joining the prospective employing organization. The letter did not state when the petitioner began his work with the prospective employer. The record contains a Form I-360 petition, WAC 06 265 51220, from [REDACTED] on behalf of the petitioner, which was approved on November 26, 2007. However, subsequent to the approval, USCIS received a letter dated August 22, 2007 from [REDACTED] notifying USCIS that it had terminated the petitioner's employment and that it was withdrawing its petition. Accordingly, the director revoked approval of the petition in a decision dated February 22, 2008.

In a request for evidence (RFE) dated May 14, 2008, the director instructed the petitioner to submit documentation of his employment for the two years immediately preceding the filing of the petition. In response, the petitioner submitted a June 8, 2008 letter in which he stated that he worked for the [REDACTED] through September 2007, at which time he joined the [REDACTED]. He further stated that from January 2006 to December 2007, he supported himself by working full time at [REDACTED] and at [REDACTED] "a full time job until my authorization was expired on December 2006."

The petitioner submitted a copy of a February 15, 2007 letter from [REDACTED], certifying that the petitioner worked at the seminary from January 1, 2004 to January 1, 2006; a copy of a January 7, 2007 letter from [REDACTED] in which it stated that the petitioner had worked under a "training Visa at the church since January 2006" while working full time at [REDACTED] a copy of a February 8, 2007 letter from [REDACTED] stating that the petitioner was employed at [REDACTED] from July 8, 2006 to December 19, 2006 as a full time associate, working from 35 to 40 hours per week; and a copy of a letter from [REDACTED] verifying that the petitioner was employed at the company from January 25, 2006 to July 21, 2006 as a full time "Office person."

The record contains a copy of the petitioner's visa, which indicates that he was approved for an F-1 nonimmigrant student visa on August 11, 2003 valid until August 10, 2005 to attend Southeastern Baptist Theological Seminary in Wake Forest, North Carolina. A December 1, 2006 letter from the seminary reflects that the petitioner graduated in December 2005.

The director denied the petition, finding that the petitioner had not been employed full time as a minister during the qualifying two year period. On appeal, [REDACTED] senior pastor of the prospective employer, stated:

[REDACTED] recruited [the petitioner] as a Pastor of the church. Upon moving to the city and into the church property [the petitioner] served as an Associate Pastor. He lived on the property from January 2006 to January 2008. As resident Pastor, his jobs, duties, and responsibilities exceeded a 40-hour week. Due to his residence on the property he was always on call. He maintained the property, consulted, and ministered to people. He traveled and did home visits, and one on one counseling. This was in addition to the regular worship service responsibilities. His employment to Lamps Plus was only part time and for a season and only helped supplement his living. He then began to work at Wal-Mart for a 5-month period to supplement his living. During his employment at these companies he still lived on the church property and tended to the duties of Pastor. On December 2006 he no longer had another job and returned in full capacity as a pastor. Even during his work at these companies he still place at least 40 hours a week in the ministry. It must be understood that his work in the ministry was 7 days a week placing at least 10-15 hours on Saturday and Sunday.

On certification, the petitioner stated, "When I worked at Wal Mart, it was an extension of my ministry: I mean in supporting ministry and sharing the gospel with other employees. I stopped all secular work when my authorization expired on December 2006." The petitioner also submitted a letter from [REDACTED] who stated that he was a member of the [REDACTED] and an assistant manager at Wal-Mart. [REDACTED] stated that he hired the petitioner to work under his supervision and "helped him to take two days off for the ministry" on Sunday and Wednesday.

The record reflects that the petitioner was not authorized to work in the United States following his graduation from Southeastern Baptist Theological Seminary in December 2005 until the Form I-360 petition filed on his behalf by [REDACTED] was approved on November 26, 2007. Additionally, approval of that petition was revoked in February 2008 after [REDACTED] withdrew its petition after terminating the petitioner's employment in 2007.

The petitioner and his prospective employer allege that the petitioner's employment with [REDACTED] was terminated in September 2007 at which time he came to work for [REDACTED]. However, the record reflects that [REDACTED] had terminated the petitioner's employment by at least August 22, 2007. Additionally, the petitioner submitted no documentation to establish that he was compensated for

his services by his prospective employer. Further, the only documentation in the record of the petitioner's work with [REDACTED] is a copy of an IRS Form W-2 for 2006 indicating that the beneficiary received wages of \$61.20.

The petitioner has therefore failed to establish that he worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition. First, the petitioner was in an unauthorized status from January 2006 until November 27, 2007, when he was initially approved for special immigrant status as a religious worker. Any work in an unauthorized immigration status in the United States interrupts the required continuous work experience. 8 C.F.R. § 204.5(m)(4). Second, the petitioner provided none of the documentation regarding compensation outlined by the regulation at 8 C.F.R. § 204.5(m)(11). Accordingly, the petitioner has failed to establish that he worked continuously in qualifying religious work during the two years immediately prior to the filing of the petition.

Beyond the decision of the director, the petitioner has failed to establish how his prospective employer intends to compensate him.

The petitioner's prospective employer stated that it would compensate him at the rate of \$1,700 per month.

In response to the director's RFE, the petitioner provided copies of the prospective employer's monthly bank statements for April 2008.

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. Therefore, he has failed to establish how his prospective employer intends to compensate him.

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 (9th 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).

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 21, 2009 is affirmed. The petition is denied.