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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

C1

[redacted]

FILE: WAC 09 018 50311 Office: CALIFORNIA SERVICE CENTER Date: MAY 06 2010

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

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).

Mari Johnson

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 the two years immediately preceding the filing of the petition.

On appeal, counsel states that the beneficiary has been employed as a minister since at least 1987 and that his "duties are essentially the same duties and responsibilities" that he has performed since his ordination. Counsel submits a brief 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 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 U.S. Citizenship and Immigration Services (USCIS) 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 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 October 27, 2008. Accordingly, the petitioner must establish that the beneficiary was 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.

With the petition, the petitioner submitted a September 8, 2008 letter from [redacted] the territorial overseer for [redacted], who stated that the beneficiary had been serving under their administration since June of 1989. [redacted] presented a summary of the beneficiary's duties as follows:

- Prepares and deliver[s] weekly sermons
- Prepare[s] and lead[s] a weekly worship
- Leads weekly small, group Bible studies in different homes
- Makes home visits
- Prepares and directs meetings on family issues twice a month
- Offers pastoral counseling to members of the church and the community
- Organizes and develops the overall life of the congregation
- Baptizes and leads the "Lord's Supper"
- Organizes and performs weddings and child dedication
- Organizes and carries out funeral services
- Organizes and holds Marriage Seminars.

The petitioner submitted copies of a "Ministers Monthly Report Form," which includes information about where the beneficiary worked, his reported activities during the month, and his compensation. The reports for October 2006 through October 2007 indicate that the beneficiary worked at [redacted] in Phoenix and Glendale, Arizona. The November 2007 through September 2008 reports indicate that he worked at [redacted] in Glendale. The petitioner provided copies of the beneficiary's uncertified IRS Form 1040, U.S. Individual Income Tax Return, for 2006 and 2007, which did not include copies of either an IRS Form W-2 or IRS Form 1099-MISC, Miscellaneous Income. The beneficiary reported $6,000 income from his job as a minister on his 2006 tax return and $24,000 in 2007.

In a request for evidence (RFE) dated February 10, 2009, the director instructed the petitioner to provide evidence of the beneficiary's work during the qualifying two-year period. The director further instructed the petitioner to:

> Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment,

> specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted another letter from [redacted] dated March 12, 2009, in which he repeated the information provided in his initial letter. The petitioner also resubmitted uncertified copies of the beneficiary's federal tax returns but again did not provide copies of IRS Forms W-2 or 1099-MISC. Furthermore, the IRS Form 1040 for 2006 submitted in response to the RFE indicates that the beneficiary reported $6,750 from employment as a minister rather than the $6,000 reported on the IRS Form 1040 submitted with the petition, and the 2007 return reflects that the beneficiary deducted $1,440 as utilities instead of the $3,600 indicated on the return submitted with his original submission. Therefore, the beneficiary's 2007 income was reported as $2,000 higher on the second 2007 tax return than on the one initially submitted. 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The director denied the petition, stating that the petitioner had failed to provide the letters of experience as instructed in the RFE and therefore had failed to establish that the beneficiary worked continuously as a minister throughout the qualifying period.

On appeal, the petitioner submits an undated letter from [redacted] who identifies himself as the territorial overseer of [redacted] expands on the duties provided by [redacted] and states that the beneficiary had been working with the organization since 1987. The petitioner also submitted a May 4, 2009 letter from [redacted] who now identifies himself as [redacted] and certifies that the beneficiary served as pastor [redacted] in Tijuana, Mexico from July 12, 2004 to August 20, 2006. [redacted] also provided a list of the hours that the beneficiary spent each week in his duties. The petitioning organization also provided a list of hours that it stated the beneficiary spends each week in his duties.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Additionally, the "Ministers Monthly Report Forms" indicate that the beneficiary worked for [redacted] from October 2006 through October 2007 and earned $2,000 per month. In a June 11, 2009 letter submitted on appeal, [redacted] stated that the beneficiary worked for [redacted] of God from "mid-September, 2006 through December 2006" and received a salary of $6,750 plus housing and expenses. The beneficiary's Form I-94 indicates that he entered the United States on September 21, 2006 pursuant to an R-1 nonimmigrant religious worker visa.

As discussed previously, the IRS Form 1040 initially submitted reflect that the beneficiary reported that he earned $6,000 in 2006. Further, the tax return did not contain a business name in Block C of Schedule C. However, the IRS Form 1040 submitted in response to the RFE reflects that the beneficiary reported earnings of $6,750 and in Block C of Schedule that the beneficiary worked at [redacted] The unexplained inconsistencies in the petitioner's evidence undermine the credibility of all of its evidence. *See Matter of Ho*, 19 I&N Dec. at 591.

The petitioner has not submitted an IRS Form 1099-MISC that reports the income that it provided to the beneficiary nor has it submitted certified copies of the beneficiary's tax returns. Further, the petitioner has submitted conflicting documentation regarding the beneficiary's dates of employment, place of employment and compensation. Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has failed to establish 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 the beneficiary would be compensated at the rate of $24,000 per year plus "other benefits." With the petition, the petitioner submitted copies of monthly bank statements for [redacted] for February through May 2008 and June 2008. The petitioner also provided copies of the beneficiary's uncertified federal income tax returns as discussed previously. However, the beneficiary's IRS Forms 1040 are not credible. The petitioner did not submit copies of IRS Forms 1099-MISC issued to the beneficiary, certified copies of the beneficiary's tax returns, evidence that it had compensated similar positions in the past or budgets reflecting money set aside for expenses, as required by the above-cited regulation.

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

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 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.