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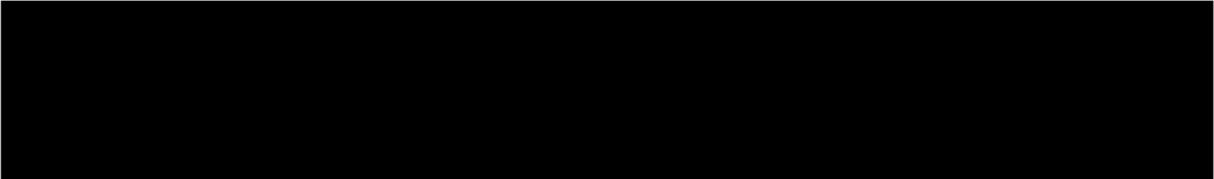
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: WAC 08 255 50324 Office: CALIFORNIA SERVICE CENTER Date **MAY 11 2010**

IN RE: Petitioner:



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:



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 regional conference of the Free Methodist 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 the pastor of Jesus Christ is Lord Church, Bronx, New York. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On appeal, counsel indicates that a brief will be forthcoming within 30 days. To date, over eight months after the filing of the appeal, the record contains no further substantive submission from the petitioner. We therefore consider the record to be complete as it now stands.

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 U.S. Citizenship and Immigration Services (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 petitioner filed the petition on September 29, 2008. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

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.

In correspondence dated March 2, 2008, [REDACTED] superintendent of the petitioning conference, stated that the beneficiary has served as a minister since May 2004, when she entered the United States as an R-1 nonimmigrant religious worker.

The petitioner submitted photocopied pay receipts, showing weekly \$150 payments to the beneficiary from [REDACTED] the "Bx" apparently an abbreviation for "Bronx." The handwritten receipts themselves are not direct proof of the transactions they describe. Also, 24 of the receipts are dated 2006; 38 are dated 2007. Therefore, the receipts would not show uninterrupted compensation even if each receipt were sufficient evidence of that week's payment.

The petitioner submitted copies of the beneficiary's 2006 and 2007 federal income tax returns. The copies were prepared by the beneficiary's tax preparer, and are not IRS-certified. On the returns, the beneficiary claimed gross income of \$7,800 in each of those two years. These amounts are consistent with the \$150 weekly pay receipts, if we extrapolate from the record that the church paid the beneficiary every week.

The petitioner also submitted photocopies of four \$100 checks from [REDACTED] and his spouse, payable to "Free Methodist Church," with the beneficiary's name written on the bottom left corner of each check. The checks (which show no processing marks) are dated September 1 and November 1, 2007, and February 1 and March 1, 2008. The beneficiary's 2007 income tax return does not reflect any income beyond the \$150 per week indicated on the pay receipts from the Bronx church.

On January 28, 2009, the director requested additional evidence of the beneficiary's qualifying employment, including Internal Revenue Service (IRS) documentation of the beneficiary's compensation during the 2006-2008 qualifying period. In response, counsel stated that, because the petitioner's previous attorney "has been very uncooperative," the petitioner "could only provide part of the requested documents." Counsel requested an extension of the permitted response period.

Additional time to respond to a request for evidence or notice of intent to deny may not be granted. 8 C.F.R. § 103.2(b)(8)(iv). Among the documents requested, but not submitted, were copies of the beneficiary's IRS Form W-2 Wage and Tax Statements. The petitioner would have issued these forms directly to the beneficiary, and filed copies with the IRS in addition to retaining copies in its own records. The alleged uncooperativeness of prior counsel would not explain the petitioner's failure to submit these documents unless the petitioner and the beneficiary had provided all of their copies of the forms to prior counsel and retained no copies for themselves.

In an affidavit, the beneficiary declared: "I last entered the United States on November 26, 2004 as a minister for [the petitioner]. I was admitted under a[n] R-1 religious worker visa. Form I-94 [Arrival-Departure Record] says I was allowed to stay until September 13, 2005." The beneficiary stated that her previous attorney failed to apply for an extension of her R-1 status, and that USCIS denied a subsequent, untimely application for an extension. USCIS records show that the petitioner filed a Form I-129 nonimmigrant petition on the beneficiary's behalf, receipt number WAC 08 236 51037, on September 2, 2008. That petition was approved, and the beneficiary's R-1 status was valid from June 11, 2008 to May 14, 2009.

On May 26, 2009, the director denied the petition, stating: "The petitioner states that the beneficiary has been employed with them since 05/15/04 in R-1 status. However, the beneficiary's status expired on 09/13/05 and the beneficiary re-entered the United States on 04/29/08 in B-2 visitor status and changed to R-1 status valid from 06/12/08 to 10/11/08." The director determined that the petitioner had not established that the beneficiary continuously worked for the petitioner from September 2006 to September 2008.

On appeal, counsel states:

The Center Director misread the I-94. [The beneficiary] did not reenter under B2 status on 04/29/08 as the Service alleged. That was an older entry stamp. The last time she entered the U.S. was May 15, 2004 and since then she has remained in the U.S. . . .

However, the issue here is whether the two-year full time work as pastor has been established. We would point out that regardless of the beneficiary's visa status, because of her last entry [on] 05/15/04, it has been established that she has been serving as a pastor for more than two years. The Record contains her tax record [to] further establish this.

When the director stated that the beneficiary re-entered the United States in April 2008, the director did not base this assertion on an "entry stamp" in the beneficiary's passport, but on other records available to USCIS. Closer examination of those records, however, shows that the alien who entered the United States on April 29, 2008 was not the beneficiary of the present petition. The director mistook the other alien for the beneficiary, based on some similarities in the information presented.

The director's error, however, does not invalidate the decision. Even if we disregard the director's incorrect assertion that the beneficiary entered the United States in April 2008, there remains the director's observation that "the beneficiary's [R-1] status expired on 09/13/05." The beneficiary herself admitted as much in her sworn affidavit; the petitioner does not contest this finding on appeal; and the record contains no evidence to contradict that conclusion.

Counsel states that we must consider the evidence "regardless of the beneficiary's visa status," but the USCIS regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) require the beneficiary's qualifying experience in the United States to have been legally authorized. The record is devoid of evidence that the beneficiary held R-1 status, or any authorization to work for her employer, between September 13, 2005 and June 11, 2008. The petitioner has not contested this lapse in the beneficiary's status. Indeed, the record shows that the petitioner filed a complaint against an attorney who failed to file a timely application to extend the beneficiary's R-1 status.

Furthermore, 8 C.F.R. § 204.5(m)(11) requires IRS documentation of qualifying employment. Counsel states that the petitioner submitted the beneficiary's "tax record," but the beneficiary's tax returns reproduced in the record are not IRS-certified as the regulation requires. (IRS certification ensures that the tax returns submitted to USCIS match those filed with the IRS.)

Counsel contends that the beneficiary's 2004 entry into the United States is, itself, evidence of the beneficiary's continuous employment. This argument fails because presence in the United States is not, itself, proof of employment for a specific employer within the United States. Also, we note that the record conclusively shows that the beneficiary left the United States on November 11, 2004, and returned 15 days later on November 26, 2004. (This evidence is not subject to the mistaken identity that affected the director's conclusions.) This overseas travel was not prolonged, but the evidence

categorically refutes counsel's repeated claims on appeal that the beneficiary never left the United States after her May 15, 2004 entry.

While the director's decision contains certain specific errors of fact, we agree with the director's core finding that the beneficiary was not lawfully authorized to work for the petitioner throughout the 2006-2008 qualifying period.

Review of the record shows additional grounds that prevent approval of the petition. 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 USCIS regulation at 8 C.F.R. § 204.5(m)(7) requires the prospective employer to attest to a number of key facts relating to the employer, the beneficiary, and the intended job. The director requested this attestation in the January 2009 request for evidence, but the petitioner failed to submit it. We acknowledge the petitioner's claim that a previous attorney's negligence left some evidence unavailable, but that attorney's conduct would not have affected the petitioner's ability to execute the required attestation during the nearly three months that the director allowed for that purpose.

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

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.

In correspondence that accompanied the initial filing, [REDACTED] stated that the beneficiary will receive \$15,980 in cash, plus housing worth \$10,000, each year. The petitioner submitted an audited financial statement and other documentation relating to the petitioning conference. The petitioner, however, did not show that the conference has been or will be responsible for paying the beneficiary from its own assets. The statement indicates that the conference paid only \$54,769 in salaries in 2003, and \$50,569 in 2004. These amounts do not appear to represent the total salary expenses of the Free Methodist Church throughout the state of New York. More likely, these figures show the expenses of the conference's own offices.

The photocopied pay receipts indicate that the church in the Bronx is the intended source of the beneficiary's compensation. The record, however, does not contain the caliber of evidence required by the regulations to establish the church's intention and ability to pay the beneficiary at the rate the petitioner has specified. From the available evidence, we have little assurance that the church either intends or is able to pay the beneficiary at a rate more than double what it supposedly paid the beneficiary in previous years. This lapse results in yet another obstacle to approval of the petition.

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 met that burden.

ORDER: The appeal is dismissed.