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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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[REDACTED]

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 04 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:

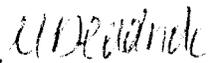
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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 Southern Baptist 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 missionary worker. The director determined that the petitioner had not established that it had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition, or that the beneficiary's intended position qualifies as a religious occupation.

On appeal, the petitioner submits a statement from church officials and documentation regarding the Southern Baptist Convention's (SBC) missionary programs.

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).

We will first examine the question of whether the petitioner has shown that the beneficiary possesses the required experience. 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 Form I-360 petition on September 16, 2008. The petitioner's initial submission included a statement jointly signed by [REDACTED] (the petitioner's pastor) and [REDACTED] (the petitioner's chairman of deacons), written in support of three petitions including the present matter. [REDACTED] and [REDACTED] wrote that the beneficiary has worked for the petitioner "[s]ince March 2006," and has "been living and working with our missionary to Bolivia, [REDACTED], prior to their invitation to come in 2003 and again in 2006." [REDACTED] and [REDACTED] stated: "We will continue to provide housing at [REDACTED] (a house that is partially owned by the church so no rent is paid)."

The petitioner submitted copies of budgets and invoices for various expenses incurred by the "Bolivian girls," a collective term for the beneficiaries. The petitioner also submitted photocopied calendar pages showing various activities that the beneficiaries undertook since 2006. Some calendar pages included accompanying photographs.

On April 15, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit additional information and evidence regarding the beneficiary's work history during the two-year qualifying period. The petitioner's response included a new joint letter from [REDACTED] and [REDACTED] indicating that IRS documentation of past compensation is unavailable because the beneficiary received "food, housing and insurance, utilities, personal needs, clothing, medical insurance, transportation, etc." instead of a salary. They repeated their earlier assertion: "We will continue to provide housing at [REDACTED] a house that is partially owned by the church so no rent is paid."

The director denied the petition on June 19, 2009, stating: "Simply furnishing certificates and letters is not sufficient to satisfy the petitioner's burden of proof in these proceedings." The director concluded that "the petitioner has failed to establish that the beneficiary has been working continuously in the same type of work as the proffered position for the two-year period immediately preceding the filing of the petition."

On appeal, the petitioner submits another joint statement from [REDACTED] and [REDACTED], once again asserting that the beneficiary "served fulltime as a missionary to our community and the Hispanics in this area since March 2006." They also repeat the claim that "we partially own the home in which she is staying and the other owner, [REDACTED], has invited us to use the home for missionaries."

The director was not entirely correct in finding that the petitioner relied entirely on "certificates and letters" to establish the beneficiary's past employment. The record contains some documentary evidence, albeit fragmentary, that appears to date from the two-year qualifying period. The most significant problem we find in this respect concerns the beneficiary's housing.

We cannot simply accept the petitioner's unsupported claim that it co-owns the house where the beneficiary lives. The petitioner has submitted letters from [REDACTED], identified as the co-owner of the Third Street house where the beneficiary lives, but no evidence regarding the ownership of that house. The petitioner submits copies of several deeds attesting to church ownership of various lots in [REDACTED]. A January 11, 2007 General Warranty Deed indicates that [REDACTED] and others transferred to the petitioner a 1/3 interest in three lots in [REDACTED] but there is no indication of whether these lots were developed, or whether the lots include [REDACTED]. All of the deeds refer to lot numbers and surveyors' measurements, but nothing to correlate any of the properties to street addresses. Therefore, the evidence the petitioner has submitted does not establish the petitioner's co-ownership of the property at [REDACTED].

Furthermore, a different address appears in letters that the petitioner previously submitted in support of the beneficiary's efforts to obtain and renew R-1 nonimmigrant status. On February 27, 2003, the petitioner stated: "The church will . . . provide housing at [REDACTED]" On January 13, 2006, the petitioner stated: "We will provide housing at [REDACTED]"

On September 8, 2008, in conjunction with a Form I-485 adjustment application, the beneficiary completed Form G-325A, Biographic Information. On that form, the beneficiary indicated that she had resided at [REDACTED], from March 2003 to January 2004 and from March 2006 onward. This is consistent with the Form I-360 petition, which showed the same [REDACTED] address for the beneficiary, but it contradicts the petitioner's claims in 2003 and 2006 that the beneficiary would reside at [REDACTED].

Because of the contradictory assertions about the beneficiary's living arrangements, we cannot presume the petitioner's unsupported claims about those arrangements to be credible. Doubt cast on any aspect of the petitioner's proof may 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). We agree with the director's finding that the petitioner has not submitted sufficient evidence regarding the beneficiary's claimed prior employment.

These same concerns about the beneficiary's housing arrangements raise another issue. The AAO may deny an application or petition that fails to comply with the technical requirements of the law 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 regulation at 8 C.F.R. § 204.5(m)(10) requires the petitioner to submit 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.

The unsupported claim that the petitioner co-owns a house is not verifiable documentation that room and board will be provided. Therefore, the petitioner has not satisfied this regulatory requirement.

The remaining issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The 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.

In their initial statement, [REDACTED] and [REDACTED] described the beneficiary’s duties:

Since March 2006, the [beneficiaries] have become an invaluable part of our ministry. . . . They are involved in having their private time of Bible study and prayer at least 7 hours each week prior to starting each day of ministry. They have a time of debriefing and Bible study each night . . . at least 7 hours each week. They are involved in home visitation . . . each week for at least 10 hours. They are involved in relating to and visiting with institutions in our town such as the Senior Center, the nursing home, and the hospital at least 10 hours each week. . . .They serve as assistant teachers in our Kids in Christ program with planning and serving at least 5 hours each week. They are involved in our Sunday School and Church Worship programs at least 3 hours each week. They teach Spanish and prepare for the class as a ministry that our church offers to individuals in the community at least 4 hours a week.

In the April 2009 RFE, the director instructed the petitioner to submit further details about the beneficiary’s specific job duties. The director also instructed the petitioner to submit “evidence that the duties primarily relate to a traditional religious function and the position is recognized as a religious occupation within the denomination.”

[REDACTED] and [REDACTED] provided the following breakdown of the beneficiary’s work schedule:

[The beneficiary] has her own private Bible study and prayer time in the mornings from 8:00 until 9:00 am. She goes to the church and prepares for the day of ministry at 9:00 am. She is involved in visitation and prayer with the elderly and sick 2 hours in the morning and 2 hours in the afternoon. . . . She is involved in prayer walking in the community for an hour each day. Additionally, she helps deliver lunches for Meals on Wheels and the Senior Center at lunchtime which generally takes [her] an hour. On Mondays, she attends English classes . . . from 1:30 pm to 3:00 pm and . . . from 4:00 to 5:00. On Tuesdays, she prepares to help the Hispanics in town and translate for them from 6:30 to 8:00 pm. On Wednesdays, she assists in the Kids in Christ classes from 6:00 to 8:00 pm. On Thursdays, she helps teach Spanish classes from 7:00 to 8:30 pm for community members who desire to learn Spanish to eventually use on mission trips. On Fridays, she participates in the English classes from 6:30 to 8:00 and then has Bible study and outreach to the Hispanics from 8:00 until 10:00 pm. On alternate Saturdays, she is involved in providing Bible study and fellowship with the Hispanics from 5-9 pm. On Sundays, she is involved in the Hispanic ministry from 8:00 to 11:15 and then from 2:00 to 8 pm.

In denying the petition, the director acknowledged the religious nature of many of the beneficiary's intended duties, but stated that USCIS "must distinguish between activities that are traditionally performed by volunteer members of the congregation . . . and activities that are traditionally performed by specialized lay personnel, as a salaried occupation." The director found that "no evidence has been submitted to establish that the duties of a 'Missionary Worker' are normally performed in the petitioner's religious denomination by a remunerated full-time permanent employee and not part time workers or volunteers."

On appeal, [REDACTED] states that the job of a missionary is "a traditional occupation of our church and denomination." There can be little doubt that many missionaries work in qualifying religious occupations, but giving an individual the job title of "missionary" does not automatically demonstrate eligibility. We must examine the nature of the job duties.

When examining the list of the beneficiary's stated duties, we note that the petitioner has included English classes that the beneficiary has been taking. There is no evidence that studying English as a second language relates to a traditional religious function in the Southern Baptist denomination. The same can be said of the beneficiary's teaching Spanish classes. The asserted motivations of the beneficiary's language students does not show that the Southern Baptist church routinely employs language instructors for religious purposes. Also, the beneficiary is said to devote several hours per week to private Bible study. Such study is surely religious and devotional in nature, but there is no reason to believe that it is a paid job duty rather than an expected function of church members, regardless of their occupation.

In their most recent joint statement, [REDACTED] and [REDACTED] state: "The Southern Baptist Convention recognizes a Missionary [as] a person who . . . leaves his or her comfort zone and crosses cultural, geographic or other barriers to proclaim the gospel and live out a Christian witness in

obedience to the Great Commission.” The petitioner submits documentation regarding the [REDACTED], showing that the church calls for “the appointment and support of missionaries in the United States and Canada.” The materials do not specify the duties of a missionary.

One NAMB document submitted on appeal states:

There are three broad categories of missionaries serving through [REDACTED]

1. **Career** Missionaries usually receive salary compensation and benefits from [REDACTED] and convention partners. They often serve in roles such as church starting, community ministry, evangelism or mission strategy. . . .
2. **Limited Term** Missionaries usually assume a vocational missionary role for a specified period of time in the same type of ministry as a Career Missionary. They receive salary and benefit support from [REDACTED] and convention partners. . . .
3. [REDACTED] Missionaries serve in many of the same mission roles as Career and Limited Term Missionaries. They do not receive salary and benefits from [REDACTED] but do receive support through training and placement services.

NAMB also recognizes three short-term “student” categories: “Sojourner,” “Summer” or “Semester,” and “Innovator.”

The petitioner submits general documentation about [REDACTED] outreach to the Hispanic community in Missouri, but no documentation to show that [REDACTED] supports or recognizes the beneficiary’s position in particular. There is no evidence that the beneficiary has received, or will receive, “salary compensation and benefits from [REDACTED] and convention partners.” The materials submitted on appeal show that the SBC recognizes and supports missionaries, but not that the beneficiary’s position falls within the scope of that recognition or support. The [REDACTED] materials submitted on appeal, therefore, tend to undermine rather than support the petitioner’s arguments, by showing that the Southern Baptist church has a formalized structure for missionary workers, but failing to show that the beneficiary falls within that structure.

The petitioner has shown that some of the beneficiary’s duties are religious in nature, but the petitioner has not shown that churches of the Southern Baptist denomination routinely employ compensated, full-time workers to perform those functions. We agree with the director’s finding in this regard.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.