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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: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 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:

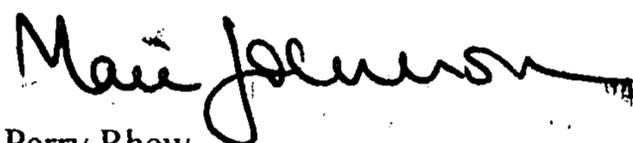
[REDACTED]

**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, with a fee of \$585. 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 church affiliated with the Good News Mission, a Christian denomination based in South Korea. 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 had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel, an affidavit from the beneficiary, numerous witness letters, and other materials.

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 Form I-360 petition on August 28, 2009.

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 [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.

On Part 3 of the petition form, asked to specify the beneficiary's "Current Nonimmigrant Status," the petitioner answered: "Out of Status," indicating that the beneficiary's nonimmigrant status expired on May 5, 2008, nearly sixteen months before the petition's filing date. The petitioner stated:

The Beneficiary's R1 status was expired on May 5, 2008. Since then, he has been working without permission as a pastor for the petitioner. However, the Beneficiary will receive protection from the accrual of unlawful presence and unauthorized employment up until Sept. 9, 2009 based on Ruiz-Diaz vs. United States."

The petitioner's initial submission contained no further information to clarify this claim.

The director denied the petition on April 6, 2010, stating "the beneficiary's status expired on May 3, 2003," owing to the revocation of the beneficiary's status as an R-1 nonimmigrant religious worker. The director noted that the beneficiary first attained R-1 status through a petition filed by Las Vegas

██████████ (receipt number ██████████), permitting the beneficiary to work for the ██████████ “for the period May 5, 2003 to May 5, 2006.” The director asserted that the beneficiary left the ██████████ for the ██████████ at the end of May 2003.

An alien in R-1 status may be employed only by the religious organization through whom the status was obtained. *See* 8 C.F.R. § 274a.12(b)(16). A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. 8 C.F.R. § 214.1(e).

The director stated: “The Director may revoke a petition at any time, even after the expiration of the petition. Approval of a petition is revoked as of the date of its approval placing the beneficiary out of status on that date. In this case May 3, 2003.” USCIS records, however, contain no evidence that the director ever revoked the approval of the Las Vegas petition. Absent documentation of such a revocation, we cannot conclude that the beneficiary was out of status as of May 3, 2003. Because the director’s April 2010 decision regarded a different petition, we will not regard that decision as being a *de facto* revocation notice for the Las Vegas petition. Nevertheless, the director was correct in finding that a change of employment from the ██████████ to the ██████████ would have violated the beneficiary’s R-1 nonimmigrant status.

In March 2006, the ██████████ filed two petitions on the beneficiary’s behalf: a Form I-129 nonimmigrant petition (with receipt number ██████████), and a Form I-360 special immigrant petition (with receipt number ██████████). Officials from the ██████████ claimed, at the time, that the beneficiary resided in El Paso and was still working at that church. USCIS denied the petition filed by the Texas church and dismissed a subsequent motion to reopen that petition. We will not discuss the merits of the ██████████ petitions here.

The director, in the denial notice, observed that the beneficiary’s R-1 status from 2003 to 2006 authorized him to work only at the ██████████, not at the ██████████ (which is now the petitioner for the instant Form I-360, receipt number ██████████). Thus, the beneficiary violated his status on two occasions, first by working in El Paso when he was authorized only to work in Las Vegas, and then by working in ██████████ when he was authorized only to work in El Paso.

On appeal, the beneficiary, in a new affidavit, claims that he “visited ██████████ regularly” but “did not inten[d] to change my membership with ██████████. Although I spent a lot of time at ██████████ I maintained my membership and employment with ██████████” The beneficiary claims that he did not formally end his employment at the ██████████ until 2006, when the ██████████ filed its petitions for him. After that point, the beneficiary claims, he “often visited” the petitioning church in ██████████ but was still “employed and paid salary by Good News ██████████ until April 2008.”

False statements by a nonimmigrant constitute a failure to maintain status. *See* 8 C.F.R. § 214.1(f). Therefore, any false statement by the beneficiary would provide yet another basis to conclude that the

beneficiary has failed to maintain nonimmigrant status. With this in mind, we will evaluate his claims both before and after the denial of the petition.

During an interview with a USCIS immigration officer on April 21, 2008, the beneficiary claimed that he was still living and working in El Paso. In a sworn statement dated April 25, 2008, the beneficiary admitted that he had moved to [REDACTED] in February 2006, and that he had asked church officials in El Paso to claim, falsely, that the beneficiary still worked at the church in El Paso and lived on church property there. (During an April 15, 2008 site inspection of the Texas church, a church official had accounted for the beneficiary's absence by claiming that the beneficiary was attending a meeting in New York.)

On August 28, 2009, the beneficiary filed a Form I-485 adjustment application, with an accompanying Form G-325A Biographic Information sheet which the beneficiary signed under penalty of perjury. The beneficiary had previously signed another Form G-325A on May 3, 2008. On these forms, the beneficiary specifically and repeatedly stated that he lived and worked in El Paso until February 2006, and in [REDACTED] Pennsylvania, from February 2006 onward. This information indicates that the beneficiary had already left El Paso when the [REDACTED] filed its petitions in March 2006, and therefore it directly contradicts the claims in those petitions. The information is, however, consistent with what the petitioner admitted in his April 25, 2008 sworn statement.

The director's decision related details of the beneficiary's sworn statements. On appeal, the beneficiary admitted "I stated that I had been working in Philadelphia since February 2006 and also that I had recorded in G-325 in the same way. It was due to my lack of understanding of the meaning of 'employment' in English." The beneficiary claims that he meant that he was "employed" only in the sense that he "devoted time" to the church in [REDACTED] (a Philadelphia suburb).

We do not find the beneficiary's explanation to be credible. If, as he now claims, the beneficiary was primarily employed in El Paso, making only occasional visits to [REDACTED], then he would have stated that he was "employed" at both locations. In any event, the wording of the beneficiary's Form G-325A and his sworn statement (witnessed by a translator) makes it clear that the beneficiary did not simply misunderstand the word "employment."

On Form G-325A, asked to list his "employment [for the] last five years," he stated that he was the pastor of the [REDACTED] from May 2003 to February 2006, and pastor of the petitioning church in [REDACTED] from February 2006 onward. Also, a separate part of the form instructed the beneficiary to list his "residence [for the] last five years." The beneficiary stated that he resided in El Paso from October 2004 to February 2006, and in [REDACTED] since that time. The beneficiary, therefore, specifically stated that he moved from [REDACTED] to [REDACTED] in February 2006.

The beneficiary's April 25, 2008 sworn statement contains the following passages:

Q: [Y]ou indicated that you were employed as the pastor for the Good [REDACTED]  
[REDACTED], is that correct?

A: Yes, I indicated that I was living and working in El Paso, Texas but I was actually living and working in Philadelphia, PA.

Q: When did you move to Philadelphia, PA?

A: Maybe [the] end [of] February, 2006, I remember February.

Q: Where have you been living since February 2006?

A: Philadelphia, Pa.

Q: On April 15, 2008, I visited the church . . . in El Paso, Texas. I was told at that time that you were living in the third house on the church[']s property, was that information correct?

A: It was not true. I asked [redacted] to answer that way, it was my fault.

Q: On April 21, 2008 . . . you told me that you were living and working at the [redacted] [redacted] was that information correct?

A: That was a lie too.

It is plain, from this exchange, that the beneficiary was not simply confused about the meaning of the word "employment."

We note that the beneficiary's adjustment application included letters from parishioners that support the director's version of events. [redacted] stated that the beneficiary "was dispatched to Good [redacted] in February 2006," and [redacted] in a letter dated November 16, 2008, stated that the beneficiary had been in the Philadelphia area "for three year[s]."

Counsel, on appeal, observes that all three churches are affiliated with the [redacted], and that all of the beneficiary's work took place under that entity. Nevertheless, denominational affiliation does not permit an alien to move from one church to another church without advance permission from USCIS, obtained through the filing of a new petition. The regulations in effect in 2006 made this clear, stating that, if "[a] different or additional organizational unit of the religious denomination" sought to employ the beneficiary, that unit would need to file a new petition, and that "[a]ny unauthorized change to a new religious organizational unit will constitute a failure to maintain status." 8 C.F.R. § 214.2(r)(6) (2006). This substantially mirrors the new regulatory language at 8 C.F.R. § 214.2(r)(13): An R-1 alien may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. A different or additional employer seeking to employ the alien may obtain prior approval of such employment through the filing of a separate petition and appropriate supplement, supporting documents, and fee prescribed in 8 C.F.R. § 103.7(b)(1). An alien cannot evade this requirement by working for one church "on paper," while actually performing compensated work at a different church. Therefore, even if there were not very serious credibility issues arising from the beneficiary's admittedly false claims, the plain and uncontested facts of the petition indicate that the beneficiary forfeited his R-1 status once he moved from [redacted] and again when he moved to [redacted].

We will not construe the above regulations to mean that if an alien so much as visits another church, then he or she will instantly forfeit R-1 status. The information in this proceeding, however, does not lead us to believe that the beneficiary simply visited other churches. Rather, there is every indication that the beneficiary outright changed employers and residences, while encouraging others to help him conceal these movements from USCIS.

Apart from the issue of the beneficiary's conflicting statements, counsel asserts that the beneficiary "should be considered to have been in lawful immigration status and lawfully employed since May 5, 2008 according to the order of Ruiz-Diaz court and USCIS implementation guideline[s] because USCIS is prohibited from count[ing] the period of unlawful presence and of unauthorized employment [from] either the filing of the original Form I-360 or from November 21, 2007," whichever came first.

Counsel, here, refers to the District Court ruling in *Ruiz-Diaz v. United States*, No. C07-1881RSL (W.D. Wash. June 11, 2009). We quote, here, the relevant paragraph of the Court's decision:

For purposes of 8 U.S.C. § 1255(c) and § 1182(a)(9)(B), if a beneficiary of a petition for special immigrant visa (Form I-360) submits or has submitted an adjustment of status application (Form I-485) or employment authorization application (Form I-765) in accordance with the preceding paragraphs, no period of time from the earlier of (a) the date the I-360 petition was filed on behalf of the individual or (b) November 21, 2007, through the date on which the United States Citizenship and Immigration Services ("CIS") issues a final administrative decision denying the application(s) shall be counted as a period of time in which the applicant failed to maintain continuous lawful status, accrued unlawful presence, or engaged in unauthorized employment.

*Id.* at 2. The above paragraph a finding of unlawful employment "[f]or purposes of 8 U.S.C. § 1255(c) and § 1182(a)(9)(B)." The former statutory passage relates to adjustment of status; the latter passage relates to unlawful presence in the context of inadmissibility. The *Ruiz-Diaz* ruling does not require USCIS to approve any special immigrant religious worker petitions filed under 8 U.S.C. § 1153(b)(4), or to overlook any unlawful, non-qualifying employment that the beneficiary engaged in prior to the filing of such a petition.

Furthermore, as counsel acknowledges, the ruling concerns unlawful employment from "the earlier of (a) the date the I-360 petition was filed on behalf of the individual or (b) November 21, 2007." *Id.* at 2. The ruling has no effect on unlawful employment that occurred before those specified points. Because the petitioner filed the petition in 2009, the ruling does not cover any unlawful employment that took place before November 21, 2007. Counsel claims that the beneficiary was in lawful R-1 nonimmigrant status in 2007. That status, however, was predicated on his ongoing employment in El Paso. The record shows that the beneficiary left [REDACTED] in 2006. Because this unauthorized change of employer constituted a failure to maintain status, we find that the beneficiary was not in lawful nonimmigrant status as of November 21, 2007. The regulation at

8 C.F.R. § 204.5(m)(11) requires that the beneficiary's employment must have been authorized under United States immigration law, but USCIS never authorized the beneficiary to work in Elkins Park in 2007. Therefore, even the most generous reading of the *Ruiz-Diaz* decision does not show that the beneficiary continuously worked in lawful status throughout the two-year qualifying period.

The bulk of the appeal consists of what appear to be several hundred third-party affidavits. The affidavits are identical, with blank spaces for the name and address of each witness. The affidavits repeat the assertion that the beneficiary has consistently worked for Good News Mission churches, and that "[m]any people have found peace and salvation through [the beneficiary's] efforts." These statements do not directly address the stated grounds for denial or introduce any relevant information into the record.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.