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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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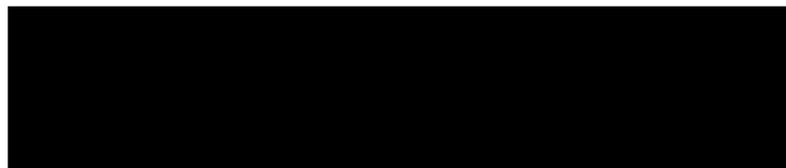


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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 16 2010  
IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:



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 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 music director/accompanist. The director determined that the petitioner had not established that the beneficiary had been a member of the same denomination and had worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

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 first issue presented is whether the petitioner has established that the beneficiary was a member of the same denomination for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides, in pertinent part:

To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must:

- (1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.

The regulation at 8 C.F.R. § 204.5(m)(5) provides: “Denominational membership means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.”

The petition was filed on October 1, 2007. Therefore, the petitioner must establish that the beneficiary was a member of its denomination for the two-year period preceding that date.

In its initial submission, the petitioner did not identify its denomination or certify that the beneficiary had been a member of its denomination for at least the two years prior to the filing of the petition. However, in a September 15, 2007 “certificate of employment,” the petitioner, through its pastor [REDACTED] stated that the beneficiary had worked as its music director and accompanist since April 2003. The petitioner also provided a copy of Form I-797A, Notice of Action, reflecting that the beneficiary had been approved for R-1 nonimmigrant religious worker status effective on April 26, 2006 to work for the petitioning organization. The petitioner submitted a copy of an undated membership roster that the director subsequently noted did not include the beneficiary’s name.

Following a compliance review verification visit conducted by an immigration officer (IO) on April 18, 2008, the director notified the petitioner of her intent to deny the visa petition. The Notice of Intent to Deny (NOID) did not address the issue of the beneficiary’s membership in the denomination. The petitioner’s response, dated February 27, 2009, was signed by [REDACTED] who stated that he assumed the role of senior pastor in November 2008 and that Reverend [REDACTED] no longer worked for the church. With the response, the petitioner submitted a March 1, 2009 “certificate of membership” signed by [REDACTED] certifying that the beneficiary had been a member of the petitioning organization since January 2003. The petitioner also submitted another undated church list, which included the beneficiary.

The director determined that the petitioner had failed to establish that [REDACTED] was an authorized representative of the petitioning organization and that the documentation submitted in response to the NOID was invalid. The director failed to recognize new counsel and did not consider any of the documentation submitted by the petitioner in response to the NOID.

On appeal, the petitioner provides a copy of a Statement of Information, filed with the Secretary of State for the State of California on November 14, 2008 and signed by [REDACTED] indicating that he is the chief executive officer of the organization. The petitioner also submitted documentation from the California Secretary of State reflecting that [REDACTED] is the petitioner’s agent for

service of process. We find that the record sufficiently establishes that Reverend [REDACTED] is an authorized official of the petitioning organization.

In denying the petition, the director determined that as the beneficiary was not listed on the initial list of church members, the petitioner had not established that the beneficiary had been a member of the same denomination for the requisite two-year period. As discussed previously, the petitioner stated in its original submission that the beneficiary had worked for the church since 2003; however, the petitioner did not allege that it was associated with any specific denomination. During the April 2008 onsite inspection, Reverend [REDACTED] advised the IO that the petitioner "was interdenominational but recently joined the [REDACTED] in the USA." The record does not reflect when the petitioning organization became associated with the [REDACTED]

The current USCIS regulations at 8 C.F.R. § 204.5(m) contain no reference to interdenominational organizations, and do not state that such organizations count as religious denominations in their own right. The regulations require denominational affiliation (*see, e.g.*, 8 C.F.R. § 204.5(m)(1)), and the petitioner has not met this essential and fundamental requirement, without which, the petitioner lies outside the class of organizations that can properly file petitions for nonimmigrant or special immigrant religious workers. Although the onsite inspection revealed that the petitioner had become associated with the [REDACTED], the record does not contain documentation as to when that association began. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Accordingly, the petitioner has failed to establish that the beneficiary was a member of a religious denomination that has a bona fide non-profit religious organization in the United States for two full years immediately preceding the filing of the visa petition.

The second 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 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. As previously discussed, the petition was filed on October 1, 2007. Accordingly, the petitioner must establish that the beneficiary 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 its September 15, 2007 "certificate of employment," the petitioner stated that the beneficiary had worked as its music director and accompanist since April 2003, and that:

Her duties and responsibilities are plans, organize[s], and directs church choir and designs [sic] to promote religious music education among choir and church members. Analyzes member participation and changes church religious musical program according to needs for musical problem and difficulties. Plans church musical activities and projects and encourage[s] active participation on programs. Visit[s] homes of choir members and confers with clergy members, church officials. Provide[s] new music and arrangement for youth and adult choir and instruments. Gives special vocal lessons to soloist and all choir members. Directs group and individual practice. Leads Hymns at worship congregation.

She works 40 hours per week and the position is full time and permanent.

Her salary is \$2,000 per month.

The petitioner submitted copies of the beneficiary's IRS Form W-2 for 2005 and 2006 on which it reported wages of \$24,000 in each year, and copies of the beneficiary's uncertified IRS Form 1040A, U.S. Individual Income Tax Return, for the corresponding years. The petitioner also submitted copies of California Forms DE-6, reflecting that it paid the beneficiary \$6,000 for the quarter ending March 31, 2007 and June 30, 2007. The petitioner also provided a copy of an August 29, 2007 "certificate of enrollment" from the California Graduate School of Theology, certifying that the beneficiary was a full-time student at the institution with an expected completion date of May 21, 2011.

During the compliance review verification visit conducted on April 18, 2008, the IO concluded that the beneficiary worked a total of only six hours per week; however, it is not clear how the IO came to this conclusion. In her February 2, 2009 NOID, the director notified the petitioner of the IO's findings and stated that the IO reached his conclusion about the beneficiary's work from his interview with [REDACTED].

In its response, the petitioner denied that [REDACTED] made the comments about the beneficiary, and provided a copy of a "weekly ministry calendar [sic]" and a "2008 Ministry Calendar [sic]." The weekly schedule provides general information and only reflects approximately 12 to 15 hours of work by the beneficiary. Nothing in the monthly calendar establishes the beneficiary's work schedule. The petitioner also provided a copy of the beneficiary's 2007 IRS Form W-2 reflecting that it paid her \$24,000 in 2007 and a copy of her uncertified 2007 IRS Form 1040A, on which she reported these wages.

The petitioner stated that the beneficiary applied for an F-1 nonimmigrant student visa in March 2008, and submitted a copy of an I-797A reflecting that she was approved for F-1 status valid beginning on July 22, 2008. The petitioner submitted a March 1, 2009 "certificate of experience" certifying that the beneficiary worked for the petitioner from April 2003 to April 2008, and another of the same date certifying that she has volunteered her services since April 2008. The petitioner submitted another "certificate of enrollment" from the California Graduate School of Theology dated March 2, 2009 indicating that the beneficiary was attending the institution full time. Neither

the August 2007 certificate nor the March 2009 certificate indicates the date of the beneficiary's enrollment. The petitioner did not provide documentation of the beneficiary's curriculum. While the new USCIS regulations do not require the petitioner to establish that the beneficiary's qualifying work experience was in a full-time capacity, the petitioner has alleged that the beneficiary worked full time. The petitioner provided no documentation that would clarify and reconcile the beneficiary's alleged full time work schedule with her full time school schedule. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The record reflects that the beneficiary began her schooling at least as early as August 2007. Accordingly, the petitioner has submitted insufficient evidence to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years (from October 2005 to October 2007) preceding the filing of the visa petition.

Beyond the director's decision, the petitioner has not established that the proffered position qualifies as that of a religious occupation. 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 (9<sup>th</sup> 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)(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.

The petitioner outlined the duties of the position as discussed previously. However, it provided no documentation to establish that the position of music director/accompanist is recognized as a religious occupation within its denomination or that it is primarily related to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination. According, the record is insufficient to establish that the proffered position is a religious occupation as defined by the above-cited regulation.

Additionally, the petitioner has not established that the beneficiary will be working in a full-time compensated position.

In response to the NOID, the petitioner, pursuant to 8 C.F.R. § 204.5(m)(7), attested that the beneficiary will be employed at least 35 hours per week, would be paid \$2,000 per month, would not be engaged in secular employment, and that the petitioner has the ability and intention to compensate the alien.

However, as discussed above, the petitioner has not explained how the beneficiary will work full time with the petitioner while also attending school full time. Further, the beneficiary has been approved for F-1 status, which limits her ability to engage in outside employment. The petitioner also stated in a March 1, 2009 employment certificate that the beneficiary has served as a volunteer with the organization since April 2008. None of this is consistent with the petitioner's claim that the beneficiary will be engaged in full time employment with the petitioner or that it will pay the beneficiary for her services. The record therefore does not establish that the beneficiary will work in a full-time compensated position.

Further, as noted by the director, this also raises the issue as to whether the beneficiary seeks to enter the United States for the purpose of engaging in qualifying religious work. While the regulation at 8 C.F.R. § 204.5(m)(4) permits a break for training of not more than two years for the purpose of establishing qualifying religious work experience, the regulation does not apply to training that extends beyond the filing date of the petition. Further, the August 2007 letter indicates that the beneficiary's schooling is expected to be completed in four years, which will result in more than the two-year break allowed by the regulation.

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.