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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



C,

DATE: DEC 14 2011

Office: CALIFORNIA SERVICE CENTER

FILE:

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:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition and a subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 bible teacher. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

Counsel submits a letter 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 on appeal 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. The petition was filed on February 24, 2004. 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 [Wage and Tax Statement] 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 February 12, 2004 letter submitted in support of the petition, the petitioner stated that the beneficiary had worked as a bible teacher for the petitioning organization since July 2000 under an R-1 nonimmigrant religious worker visa. On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner stated that the beneficiary arrived in the United States on August 21, 2003 in an R-1 nonimmigrant religious worker status. The petitioner submitted a copy of the receipt for a Form I-797A, Notice of Action, which reflects that the beneficiary was approved for R-1 status with a validity period of July 1, 2000 to June 30, 2003. A copy of her R-1 visa indicates that it was issued on April 9, 2001 with an expiration date of April 8, 2006 and is stamped to reflect that she entered the United States on April 17, 2001. A copy of the beneficiary's Form I-94 contains an illegible entry date but reflects her entry in an R-1 status that was valid until August 16, 2004. The petitioner also submitted copies of IRS Forms W-2 that it issued to the beneficiary, reflecting that it paid her wages of \$12,994.08 in 2002 and \$9,600 in 2003. The petitioner provided uncertified copies of the beneficiary's unsigned and undated IRS Form 1040, U.S. Individual Income Tax Return, for 2002 and IRS Form 1040EZ, Income Tax Return for Single and Joint Filers with No Dependents, for 2003, on which she listed the wages. The beneficiary identified herself on the tax returns as a "Sunday School Teacher." The petitioner also submitted copies of unprocessed checks that it had made payable to the beneficiary in the amount of \$800 in November and December 2003 and January 2004.

On September 26, 2008, immigration officers (IOs) visited the petitioner's premises in connection with a petition filed on behalf of another individual. During that visit, the petitioner's senior pastor, [REDACTED], who stated that he had worked for the church for only three months, identified five employees of the petitioning organization that included himself but excluded the beneficiary of the instant petition. On October 21, 2009, the director advised the petitioner of the IOs' findings and requested additional documentation to establish, *inter alia*, the beneficiary's work history and compensation, and requested copies of the beneficiary's IRS Forms W-2 for 2002 and 2003.

In response, the petitioner provided an employee list effective as of November 2009, on which the beneficiary is listed. A legible copy of the beneficiary's IRS Form I-94 indicates that she was admitted into the United States on August 21, 2003 in an R-1 status which was effective until August 16, 2004. The petitioner submitted a copy of a May 5, 2004 Form I-797 indicating that the beneficiary was approved for an extension of stay from April 17, 2004 to June 30, 2005 and a copy of a September 14, 2009 Form I-797 granting the beneficiary employment authorization valid from September 11, 2009 to September 10, 2011. The petitioner also submitted copies of IRS Forms W-2

that it issued to the beneficiary from 2002 through 2005. In an October 28, 2009 letter, [REDACTED] certified that the beneficiary had been employed by the petitioning organization from July 11, 2000 to June 30, 2005. In his November 19, 2009 letter accompanying the petitioner's response, counsel stated that the beneficiary had worked for the petitioner until June 2005, when she reached the five-year statutory limitation for R-1 workers, and that because her status had expired, she was not working for the petitioner on September 26, 2008 when IOs visited the petitioner's premises.

The director denied the petition on December 8, 2009, finding that the petitioner had failed to explain why the beneficiary's name did not appear on the list of employees provided by [REDACTED] on September 26, 2008. On motion, counsel again stated that the beneficiary had worked for the petitioner until her R-1 status expired in 2005 and resumed worked when she received employment authorization in 2009. Counsel stated that a letter from the petitioner was included to explain the reasons why [REDACTED] did not name the beneficiary as an employee in 2008. In his December 18, 2009 letter, [REDACTED] stated that, "at the time [the] site visit was conducted on September 26, 2008, [the beneficiary's] R-1 status was expired; therefore she was not eligible to work for the church. But the offer of permanent position as a bible teacher has been [sic] continued to exist . . ." The petitioner also provided IRS transcripts of the beneficiary's tax returns for the years 2002 through 2005.

The director again denied the petition, finding that the petitioner had failed to provide the letter indicated by counsel that would explain the absence of the beneficiary's name from the 2008 list of the petitioner's employees. On appeal, the petitioner submits a February 26, 2010 letter again explaining that the beneficiary was not working in 2008 because she did not have permission to do so, a February 26, 2010 letter from [REDACTED] again confirming the beneficiary's employment from July 1, 2000 to June 30, 2005, and a February 26, 2010 "petition" signed by members of the petitioning organization affirming that the beneficiary worked as a bible teacher with the petitioner from July 2000 to June 2005.

The decision of the director is withdrawn. The documentation submitted by the petitioner is sufficient to establish that the beneficiary worked for the petitioning organization throughout the qualifying period. Nonetheless, the AAO does not find that the petitioner has submitted sufficient documentation to establish that the proffered position is a religious occupation within the meaning of the regulation.

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 stated that the proffered position is that of a bible teacher. In its February 12, 2004 letter, the petitioner stated that the beneficiary's duties included "preparing group curriculum, determining adequate teaching materials for the group, and organizing special events." In response to the director's October 21, 2009 Notice of Intent to Deny (NOID), the petitioner provided an explanation of the role of the bible teacher; however, it submitted no documentation to establish that the position is recognized as a religious occupation within the denomination. Additionally, [REDACTED] advised the IOs during their September 2008 visit that it had a youth teacher who was not the beneficiary. That individual is identified in the 2009 list of employees as a bible teacher focusing on the adult ministry while the beneficiary is named as a bible teacher focusing on children, youth and young adult members. As previously stated, the beneficiary identified herself as a "Sunday school teacher" on her tax returns. There is no evidence of the size of the petitioner's congregation, the number of children and the young adult members in the congregation, and whether the petitioner is offering the beneficiary full time employment. The daily schedule provided by the petitioner in response to the NOID indicates that the beneficiary holds bible classes from 9 am to 11 am on Tuesdays, which would normally interfere with schooling for the children and youth.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(12) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The record does not establish that the petitioner has successfully completed a compliance review.

The matter will be remanded to the director for further determination as to whether the proffered position qualifies as that of a religious occupation, whether the beneficiary will be employed in a full time position, and whether another compliance review or onsite inspection is appropriate.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.