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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**

C1

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 04 2011

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. On December 10, 2008, the Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will again withdraw the director's decision and remand the petition for further action and consideration.

The petitioner is a Christian missions organization. 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 an evangelist/minister. The director determined that the petitioner had not established that the beneficiary had been a member of the petitioner's religious denomination and worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition. The director further determined that the petitioner had failed to fully respond to U.S. Citizenship and Immigration (USCIS) requests for additional documentation.

The petitioner submits a letter on certification.

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 its religious denomination 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 (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.

(3) Be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States.

The petition was filed on February 21, 2006. Therefore, the petitioner must establish that the beneficiary had been a member of its denomination for two full years immediately preceding that date.

In a January 10, 2006 certificate of employment, the petitioner certified that the beneficiary had worked for the petitioning organization since 1999. With the petition, the petitioner submitted copies of Internal Revenue Service (IRS) Form 1099-MISC, Miscellaneous Income, reflecting that the beneficiary received \$30,000 in nonemployee compensation from [REDACTED] from 2002 through 2004. The petitioner submitted no other documentation to establish that the beneficiary was a member of its denomination during the two years immediately preceding the filing of the petition.

In a request for evidence (RFE) dated July 13, 2007, the director requested additional information regarding the petitioner's membership in its denomination, instructing the petitioner to:

Provide documentary evidence to establish whether a connection exists between [the petitioning organization], [REDACTED] and any other church the beneficiary has worked at between 02/21/2004 and 02/21/2006 . . . Part 3 of the petition reflects the beneficiary is currently in Beijing, China, provide documentary evidence to show how [the] organization abroad is connected with the petitioner's religious denomination in the United States.

In a September 10, 2007 letter submitted in response, [REDACTED], the petitioner's director and the official who signed the petition for the petitioner, stated that as the organization began to grow in China, "it became necessary to establish another name to work under in China, due to the religious intolerance that exists there toward Christian organizations. Therefore, I established [REDACTED] as an organization that administrates the work that [the beneficiary] does in China." The petitioner submitted copies of IRS Form 1099-MISC, indicating that [REDACTED] paid the beneficiary \$31,300 in nonemployee compensation in 2005 and \$33,557 in 2006.

The director denied the petition, finding *inter alia*, that the petitioner had failed to establish that the beneficiary had the required two years membership in the petitioner's denomination. The director found that the letter from [REDACTED] was insufficient to establish a relationship between the petitioner and [REDACTED]. The director also noted that the IRS Forms 1099-MISC submitted in response to the RFE were from a different organization and that the petitioner provided no documentation to establish a relationship between [REDACTED] and the petitioning organization.

On appeal, the petitioner submitted a copy of the articles of incorporation for [REDACTED] and the December 1998 bylaws for that organization. The documents indicate that [REDACTED] was an incorporator of the organization and served as its president. The petitioner also submitted a copy of an

October 28, 1998 letter from the State of Texas Secretary of State indicating that the [REDACTED] had filed a certificate for the assumed name of [REDACTED]. The petitioner provided a November 26, 2007 letter from the petitioner's assistant administrator stating that [REDACTED] was president of the petitioner's board.

Pursuant to requirements under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), on November 26, 2008, USCIS issued new regulations for special immigrant religious worker petitions. On December 10, 2008, the AAO remanded the petition to the director to give the petitioner an opportunity to submit evidence in accordance with the new requirements.

In response to the director's Notice of Intent to Deny (NOID) issued following the AAO's remand, the petitioner attested that the beneficiary had worked for the petitioning organization for more than two years prior to the filing of the visa petition. [REDACTED] signed the attestation as the petitioner's authorized official. In her certified decision, the director again found that the petitioner had failed to establish a relationship between [REDACTED] and the petitioning organization.

In a July 14, 2009 letter submitted on certification, the petitioner stated that for the safety of its members, its "organization has had to at times create separate legal entities in order to operate" in certain countries. It stated further that it had created [REDACTED] as a parent organization to obscure its internationally known name.

We find that the petitioner has submitted sufficient documentation to establish a relationship between [REDACTED] and the petitioning organization and that the beneficiary has been a member of its denomination for two full years immediately preceding the filing of the visa petition and we withdraw the director's determination to the contrary.

The second issue is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious occupation or vocation 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 noted, the petition was filed on February 21, 2006. 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.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary's address was in Beijing, China. As previously discussed, the petitioner submitted a copy of an IRS Form 1099-MISC in 2004, indicating the beneficiary received nonemployee compensation of \$30,000 from [REDACTED]. The petitioner also provided a copy of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for 2004, in which she reported this income.

In response to the RFE, the petitioner submitted a letter from [REDACTED] regarding the beneficiary's services, in which he stated:

[T]he specific duties that [the beneficiary] has been undertaking for us are related to her being a Chinese citizen, and of course familiar with the language and culture of China. Specifically, she is involve[d] in training our students in cross-cultural ministry,

understanding the history of China, leading prayer meetings for missionary efforts in China, coordinating outreach to orphans in China, leading teams from our US ministry that spend time working in China, and translating during times of ministry to Chinese speaking congregations.

In another letter of the same date regarding the beneficiary's work history, [REDACTED] stated:

A typical week of [the beneficiary] would be: Monday – Speaking in our training schools about Chinese culture, Tuesday – Leading prayer times for ministry in China, along with workshops to teach specific aspects of ministry in China, Wednesday – Planning meetings for ministry trips to China, Thursday – Travelling to speak to Chinese believers, and also to translate for others speaking there also, Friday – Planning the development of our work with orphans in China, Saturday – Free time, Sunday – Sharing her testimony about being a Christian in China, and helping to recruit people to work with our ministry efforts in China.

The petitioner submitted copies of IRS Forms 1099-MISC indicating that the beneficiary received nonemployee compensation from the [REDACTED] in the amount of \$31,300 in 2005 and \$33,557 in 2006. The petitioner also provided copies of the beneficiary's unsigned and undated IRS Form 1040 for 2005 and IRS Form 1040NR, U.S. Nonresident Alien Income Tax Return, for 2006 on which she reported this income. The beneficiary indicated on page 5 of the IRS Form 1040NR that her nonimmigrant status was R-1, nonimmigrant religious worker. USCIS records reflect that during the qualifying period, the beneficiary traveled into the United States on various occasions pursuant to a B-1/B-2 nonimmigrant visitor's visa or an R-1 visa. In her supplemental statement attached to the IRS Form 1040NR, the beneficiary listed the dates that she traveled to the United States from China.

The petitioner has submitted sufficient documentation to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition. We withdraw this determination by the director.

Finally, the director determined that the petitioner failed to fully respond to USCIS requests for additional documentation.

In her January 13, 2007 RFE, the director instructed the petitioner to submit copies of its IRS Form W-3, Transmittal of Wage and Tax Statements, for 2005 and 2006. In response, the petitioner provided a statement that in 2005 it had 208 employees and paid \$1,811,409.65 in gross wages, and that in 2006 it had 223 employees and paid \$2,129,801.80 in gross wages. The petitioner did not submit the Forms W-3 as instructed.

In denying the petition, the director noted that the petitioner had failed to submit the IRS Form W-3 as requested in the RFE, noting that the requested information "is crucial in determining whether the petitioner has demonstrated that the beneficiary's services are needed; thereby, there exists a reasonable and credible offer of employment." We note that the petitioner had previously compensated the beneficiary as a "nonemployee." Therefore, IRS Forms W-3 would not provide a complete picture of the services required by the petitioner. Furthermore, the director cited to the Foreign Affairs Manual (FAM) as a basis for her determination.

On appeal, the petitioner provided a copy of the information transmitted to the IRS listing the total number of its employees and the wages paid. The petitioner's director of accounting stated "now that our

organization is required to send this information electronically to the IRS, we are no longer required to use the actual IRS form W-3, however, the information provided is the same information formerly presented on IRS form W-3.”

We note that the petitioner stated that it was no longer required to submit an IRS Form W-3 to the IRS but provided a copy of the information that it submitted to the IRS. We find that the petitioner has satisfied the director’s request for documentation and we withdraw the director’s determination to the contrary.

Nonetheless, the petition may not be approved as the record now stands.

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 is remanded to the director to determine whether a compliance review, inspection, compliance review or other verification process is appropriate for the petition.

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.