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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 15 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:

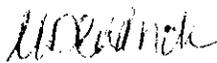
SELF-REPRESENTED

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 \$630. 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 appeal will be dismissed.

The self-petitioner seeks classification 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 minister. The director determined that the petitioner had not established that his prospective employer is a bona fide nonprofit religious organization.

The petitioner states on appeal that initially he was “unable to submit the IRS [Internal Revenue Service] determination letter” because it had not arrived. He further states that he submitted the letter when it was received from the IRS. The petitioner submits 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 is whether the petitioner has established that his prospective employer is a bona fide nonprofit religious organization.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

Tax-exempt organization means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the IRC [Internal Revenue Code] of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

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

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the [IRS] establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The

certification is to be submitted by the petitioner along with the petition.

With the petition, the petitioner submitted a statement that [REDACTED] his prospective employer, was exempt from tax under section 501(c)(3) of the IRC and does not have to file an IRS Form 990, Return of Organization Exempt from Income Tax. The petitioner also submitted a copy of an IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, and a September 8, 1999 letter from the Secretary of State of the State of Texas, to [REDACTED] advising him that the [REDACTED], had filed its required report as a Texas nonprofit corporation. The petitioner did not submit a currently valid determination letter from the IRS.

In response to the director's June 29, 2009 request for evidence (RFE), the petitioner submitted a July 18, 2009 letter from [REDACTED] signed by its pastor, [REDACTED] which stated that it did not have the determination letter from the IRS but that the letter had been requested. [REDACTED] stated that he was requesting an extension of time in which to submit the documentation. On August 15, 2009, the director denied the petition based on the petitioner's failure to provide a currently valid determination letter from the IRS establishing his prospective employer's status as a religious organization exempt from income taxes under section 501(c)(3) of the IRC.

On appeal, the petitioner states:

On June 29, 2009 the Service issued a request for additional evidence with a response due date of July 29, 2009. On July 25, 2009 I submitted all of the requested evidence that was available at that time. I was unable to submit the IRS determination letter for 501(c)(3) status as it had not yet arrived from the IRS. I submitted the documentation in an incomplete state as I was afraid to miss the submission deadline of 07/29/09. I included with the documentation a letter from [REDACTED] of the [REDACTED] stating the he was awaiting the arrival of the IRS documents and asking for an extension on the Services Request for Evidence. On July 21, 2009 the IRS issued the determination classifying the [REDACTED] as a 501(c)(3) organization since 1998. Immediately upon receipt of this document I mailed it to the Service to be included in my I-360 package.

The petitioner submits a copy of a July 21, 2009 letter from the IRS advising the [REDACTED] that a determination letter had been issued to the organization in 1998 recognizing it as a tax exempt organization under section 501(c)(3) of the IRC. The petitioner also resubmitted the July 18, 2009 letter from [REDACTED] and documentation to apparently show that the IRS determination letter was submitted prior to the director's denial of the petition.

The regulation at 8 C.F.R. § 103.2(b)(8)(iv) provides that additional time to respond to an RFE may not be granted. Additionally, the regulation at 8 C.F.R. § 103.2(b)(11) requires that all

requested material must be submitted at one time and provides that a partial response will be considered as a request for a decision on the record. We further note that the request for additional time came not from the petitioner, but from his prospective employer. The petitioner bears the burden of proof of establishing eligibility for immigration benefits. Section 291 of the Act, 8 U.S.C. § 1361. His prospective employer is not a party in this proceeding.

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), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

At issue here is whether the record before the director established that the petitioner's prospective employer is a tax-exempt organization. As previously indicated, at the time of filing, the petitioner submitted no evidence of a currently valid determination letter from the IRS. In response to the RFE, the petitioner submitted a letter from his prospective employer that it had requested documentation from the IRS and was waiting for a reply. Accordingly, we find no error on the part of the director in determining that the petitioner failed to establish that his prospective employer had a valid determination letter from the IRS at the time he filed the petition or at the time he responded to the RFE as required by 8 C.F.R. § 204.5(m)(8). The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition.

We concur with the director's determination that the petitioner failed to establish that it is a tax-exempt organization as required by the regulation at 8 C.F.R. § 204.5(m)(8).

Beyond the decision of the director, the petitioner has not established that he 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 he 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 April 6, 2009. Accordingly, the petitioner must establish that he 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 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 Part 8 of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, Employer Attestation, [REDACTED] on behalf of the petitioner's prospective employer stated:

[The petitioner] has been compensated as a salaried and non-salaried worker with our Church from June 9, 2004 until the present. He is generally paid \$400.00 weekly for 35-40 hours of Ministerial work. On some occasions during the years that he has worked for our Church, compensation has varied due to constraints of the Church's income and budget. On those occasions salary was lower and/or Non-Salaried compensation was provided.

With the petition, the petitioner provided a partial copy of his unsigned IRS Form 1040, U.S. Individual Income Tax Return, for 2007.¹ On the IRS Form 1040, which the petitioner filed jointly with his wife, the petitioner reported \$40,444 in wages and \$12,500 in "other income." The petitioner submitted no documentation to explain the source of the wages reported. Further, he submitted no documentation of any non-salaried compensation.

In her RFE of June 29, 2009, the director instructed the petitioner to submit documentation of his prior compensation in accordance with the above-cited regulation. In response, the petitioner submitted a July 18, 2009 letter from [REDACTED] who stated:

I would like to explain the difficulty that we have in presenting some of the paper documentation that USCIS has requested. We are a small church and have been under difficult economic constraints. [The petitioner] is generally paid in the value of approximately \$400.00 weekly for working 35-40 hours of Ministerial work. Throughout the years that [he] has been working for our church, I have paid him by check, by cash and by non salaried compensation. As permitted by our Church budget, [the petitioner] has been paid weekly in cash or by check in varying amounts that are at least [] \$100 and up to \$400 in money.

In addition to the money that [he] has been paid, he is compensated with transportation, in that the church provides [him] with a vehicle which he can drive to perform his ministerial duties on a daily basis. This vehicle is owned by our church and therefore we have authorized [the petitioner] to use it as it is necessary to extend[] his ministerial assistance to our congregation.

[The petitioner] is also compensated with assistance for housing and food. Compensation for housing has been paid once per month in the form of cash and/or money order so that [the petitioner] can pay for his living quarters. Compensation for food has been paid occasionally in the form of actual food items that are provided to [the petitioner] in lieu of money.

The petitioner provided copies of what appears to be stubs from a check book indicating that checks were made payable to him in varying amounts in 2007 and 2008. The stubs do not show a

¹ The petitioner also provided a copy of his 2006 IRS Form 1040, However, that document is outside of the filing date of the petition and is therefore not relevant in establishing the petitioner's qualifying work experience.

payer. Further, a close view of the documents reveals that the petitioner submitted duplicates of the check stubs and that at least two do not indicate an amount paid. Additionally, at least two of the stubs have obvious alterations. Of particular note is the receipt number 2187 dated July 14, 2008, which is included twice in the record. While both copies indicate a payment of \$300 and both have been altered, one of the alterations is more obvious than the other.

Doubt cast on any aspect of the petitioner's proof may, of course, 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). 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 check stubs submitted by the petitioner are not credible evidence that he worked in religious work during the qualifying period. Not only do they not show who allegedly drew the checks, the alterations do not credibly show that the petitioner received any payments for religious work. The petitioner also submitted several money order receipts dated in 2008 and 2009. Most of the receipts are in the amount of \$775; however, two are for approximately \$800, one is for \$150 and the other is for \$380. The receipts do not indicate who made or received the money.

Additionally, the petitioner submitted a copy of the payroll register for [REDACTED] for the period January 1, 2009 through December 31, 2009. However, most of the payments indicated on the register are after the filing date of the petition and therefore are not relevant in establishing the petitioner's qualifying experience. Only one entry is pertinent to this issue. The register indicates the petitioner received a payment of \$800 on April 3, 2009, three days before the petition was filed.

The petitioner provided an uncertified copy of his unsigned IRS Form 1040 for 2008 that he filed jointly with his wife and on which he lists his occupation as "educational minister." His wife is identified as a "housewife." The IRS Form 1040 indicates that the petitioner reported \$8,219 in wages and \$13,000 in "other income" as an educational minister. The petitioner provided no documentation to establish the source of the wage income reported on the IRS Form 1040. Additionally, the petitioner submitted no documentation of any non-salaried income that he received from [REDACTED].

The petitioner has submitted insufficient documentation to establish that he worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

Additionally, the petitioner has failed to establish how his prospective employer intends to compensate him.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

Evidence relating to compensation. Initial evidence must include 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. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

As discussed previously, [REDACTED] stated on the Form I-360 that the petitioner is “generally paid \$400.00 weekly.” However, the petitioner submitted no documentation to establish that he received weekly compensation, in the form of either a salary or other compensation, from his prospective employer. The petitioner submitted no documentation that the prospective employing organization has paid the proposed compensation in the past or that it has budgeted for the position. Further, the petitioner submitted no documentation to establish that he received any non-salaried compensation from [REDACTED]. The petitioner has failed to submit verifiable evidence of how he will be compensated by his prospective employer.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.