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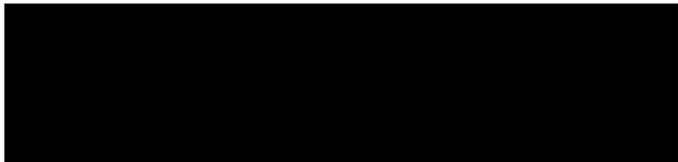
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

C,



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,

U Deadrick
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 musician. The director determined that the petitioner had not established that it qualifies as a nonprofit religious organization, that the position qualifies as that of a religious vocation or occupation, that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition, and how it intends to compensate the beneficiary.

The petitioner 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 first issue presented is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The 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 [Internal Revenue Service] 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.

The petitioner submitted no documentation to establish its tax-exempt status with the petition. On June 16, 2009, the director issued the petitioner a request for evidence (RFE), in which she instructed the petitioner to submit documentation to establish its bona fides as a nonprofit religious organization in accordance with the above-cited regulation. The petitioner failed to provide the requested documentation.

On appeal, the petitioner submits a copy of an August 17, 2009 letter from the IRS notifying the petitioner of its employer identification number (EIN). However, the petitioner again failed to provide a currently valid determination letter from the IRS establishing that it is a tax-exempt organization.

Accordingly, the petitioner has failed to establish that it is a bona fide nonprofit religious organization as required by the regulation.

The second issue presented is whether the petitioner has established that the proffered position qualifies as that of a religious occupation. The U.S. Citizenship and Immigration Services (USCIS) 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 on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the proffered position was that of musician and stated that the duties included helping the choir director, accompanying the choir and congregation during the singing of hymns, and being available for additional services to participate with the choir. In her RFE, the director instructed the petitioner to:

Provide a **detailed description** of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do

the job and submit documentary evidence to show that the beneficiary has met such requirements. Further, explain how the duties of the position relate to a traditional religious function. [Emphasis in the original.]

In response, the petitioner stated that the beneficiary's specific job duties were:

President of Tongan Community, liaise between pastor to women's group and its activities, ensure that the Tongan community is active in the services and ministries of the church, liaise between [redacted] communities with [redacted] community at [redacted] Tongan Community, [redacted] community at Kaua'i, Maui, Hilo and Oahu.

We note that the document also states that the proffered position is that of president. Additionally, other documentation submitted with the petitioner's response relate [redacted] the petitioner's senior pastor and the official who signed the petition on behalf of the petitioner. The petitioner submitted no additional documentation regarding the proffered position.

The director determined that the petitioner had not established that the proffered position qualifies as that of a religious occupation or vocation. On appeal, the petitioner states:

[The beneficiary] is a musician at the [petitioning organization] . . . He is responsible for the church choir, the youth choir and the Sunday school choir. And they are active in worship and the church service every Sunday. [H]is musical [contributions] are priceless and without his service the church would be obsolete. He is a volunteer worker with non salary and after every month the church makes donation to the beneficiary thus not submitting IRS documents.

However, the petitioner provided no documentation to establish that the duties of the proffered position primarily relate to a traditional religious function, that the position is recognized as a religious occupation within the denomination, and that the duties primarily relate to, and clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

Additionally, the petitioner expanded the duties of the proffered position on appeal. The petitioner initially stated that the duties involved helping the choir director and accompanying the choir. However, on appeal, the petitioner stated that the beneficiary was responsible for three choirs. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not 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 Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The petitioner has not established that the proffered position is a religious occupation within the meaning of the regulation.

The third issue 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 March 2, 2009. 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 February 16, 2009 letter submitted in support of the petition, the petitioner, through [REDACTED] stated that the petitioner had "been bringing [the beneficiary] back and forth to the country to assist with the youth and young adult's choir." The petitioner submitted no other documentation regarding the beneficiary's work during the qualifying period. The petitioner also submitted a copy of the beneficiary's visa indicating that he was approved for B1/B2 status and issued on October 18, 2001 and expiring on October 2011. The beneficiary's Form I-94 departure record indicates that he entered the United States as a B-2 nonimmigrant visitor for pleasure on October 14, 2008. An alien who is present in the United States pursuant to a B-2 visa is not authorized to work in the United States. Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B); 8 C.F.R. § 214.1(e). Thus, if the beneficiary performed any work in the United States while in a B-2 status, that work would interrupt the continuous work experience for purpose of this visa classification.

In her RFE, the director instructed the petitioner to submit documentation to establish the beneficiary's work history pursuant to the above-cited regulation. In response, the petitioner stated that the beneficiary "has volunteered his/her time in support of the church. His/Her status is that of a volunteer with at least 30 hours a week." However, the document indicates that the beneficiary "is able to translate from English to Tongan and vice versa" and that his "capacity to interpret church teachings, doctrines, and activities that is understandable to the Tongan community that he/she serves." Thus, it is unclear as to whether the document refers to the beneficiary.

The petitioner submits no additional documentation regarding the beneficiary's qualifying experience on appeal.

The petitioner has failed 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.

The final issue is whether the petitioner established how it intends to compensate the beneficiary.

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.

The petitioner did not state that it would compensate the beneficiary for his services. On appeal, the petitioner states that the beneficiary "is a volunteer worker with non salary" and that the church makes a donation to him each month. The petitioner submitted no documentation of any compensation paid to the beneficiary. Accordingly, it has failed to submit verifiable documentation of how it intends to compensate the beneficiary. Further, the regulation at 8 C.F.R. § 204.5(m)(7) requires the petitioner to attest that it has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges. The record does not reflect that the petitioner has the ability or intent to compensate the beneficiary.

The petitioner has therefore failed to establish how it intends to compensate the beneficiary.

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.