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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:



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 AAO will dismiss the appeal.

The petitioner is a church belonging to [REDACTED], based in [REDACTED]. 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 senior bible teacher at the petitioner's [REDACTED]. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition. The director based this conclusion on findings from a compliance review site inspection of the petitioning entity.

On appeal, the petitioner submits a brief from counsel, witness letters, and other materials.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that any qualifying experience gained in the United States must have been authorized under United States immigration law, and that the petitioner must submit Internal Revenue Service (IRS) documentation of compensation paid, if available.

The petitioner filed the Form I-360 petition on August 15, 2008. In a letter accompanying the initial filing, [REDACTED] pastor of the petitioning church, stated:

[The beneficiary] is qualified to fill the special immigrant position of elementary teacher. . . .

She has worked in her current position at the [petitioning church] for the past two years as a bible studies teacher. . . .

Since [June 2006] the church employed her as a teacher at the [REDACTED] [REDACTED] a private educational institution that is part of the [petitioning church]. [The beneficiary] currently teaches Bible studies to ages 3 through 11 (Kindergarten through sixth grade).

The petitioner submitted copies of 2006-2008 course syllabi, marked with the beneficiary's name.

A letter from the petitioner's administrator, [REDACTED] indicated that the petitioner "is fiscally responsible for the school operating in our church, [REDACTED] and the day care center, [REDACTED]. The petitioner submitted copies of the 2007 budget summaries for [REDACTED] and [REDACTED]. Both of those budget summaries listed payroll expenses, indicating that the school and the day care center each had their own employees.

On December 23, 2008, the director instructed the petitioner to submit additional evidence, including IRS documentation of past compensation paid to the beneficiary. The petitioner's response included copies of IRS Form W-2 Wage and Tax Statements, showing that [REDACTED] paid the beneficiary \$5,818.68 in 2006 and \$15,333.20 (plus health insurance coverage worth \$2,128.75) in 2007. In an accompanying letter, [REDACTED] stated that the beneficiary's "degree in bible theology fills a gap we presently have in our teaching staff." No one from the petitioning entity explained why the beneficiary was on [REDACTED] payroll instead of that of [REDACTED] and no one indicated that the beneficiary performed any day care work.

The USCIS regulation at 8 C.F.R. § 204.5(m)(12) reads as follows:

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.

On February 18, 2009, a USCIS officer visited the petitioning church and spoke to the beneficiary, the beneficiary's supervisor, and [REDACTED]. The officer concluded that the petitioner had failed the compliance review because "it does not appear that [the beneficiary] is working in the capacity indicated on the petition."

The director denied the petition on April 14, 2009, stating that the information from the site inspection contradicts the petitioner's claim that the beneficiary has been, and continues to be, a bible studies teacher at [REDACTED]. The director summarized the site inspection report as follows:

The compliance review on February 18, 2009, revealed that the beneficiary is employed as a day care provider to children aged approximately 2-3 years. The beneficiary's supervisor, who claims to have an 11 year employment history with the organization, stated that the beneficiary has not worked with the academy and has never created any lesson plans or curriculum for the academy. This information contradicts the evidence submitted with the petition, as well as the information provided by [Pastor Smith] during his interview.

The director noted that the beneficiary had received her 2006 and 2007 salary from [REDACTED], not from [REDACTED]. The director stated that day care for young children is not a religious occupation, and concluded that the petitioner had not shown that the beneficiary had worked in a qualifying religious occupation continuously throughout the 2006-2008 qualifying period.

On appeal, the petitioner submits a letter from [REDACTED] who claims to have taught at [REDACTED] until 2008. (The record contains [REDACTED] payroll materials showing her name.) [REDACTED] states that the beneficiary "worked as the [REDACTED] . . . She worked with students ranging from grades kindergarten through six."

[REDACTED] identified as director of [REDACTED] and principal of [REDACTED] states in an affidavit that the beneficiary's "role is fundamental to the school as a teacher. . . . In the conversation I had with the CIS officer I provided her with examples of [the beneficiary's] lesson plans during the period that she was teaching."

Counsel protests the director's reliance on "a statement made by an unidentified individual who claims to be the Beneficiary's supervisor . . . that [the beneficiary] only provided services as a 'child care provider.'" While the inspecting officer's summary referred anonymously to the beneficiary's supervisor, the report elsewhere identified the supervisor:

Per [REDACTED] ([REDACTED] [the beneficiary's] supervisor): [REDACTED] is lead teacher in HER room (6 children) . . . [REDACTED] is certified for daycare. . . . [REDACTED] did not create lesson plans/curriculum, and had little to do with academy when it was in session, and does not work in after-school program. . . . [REDACTED] is in charge of school/academy when in session. [REDACTED] has been employed at church for 11 years.

Clearly, [REDACTED] is the "unidentified individual who claims to be the Beneficiary's supervisor," and who stated that the beneficiary "had little to do with [the] academy when it was in session." Significantly, [REDACTED] (the only person to provide a statement on appeal in the form of a sworn affidavit) does not directly contest or contradict the inspecting officer's key findings. [REDACTED] states, without elaboration, that the beneficiary's "role is fundamental to the school as a teacher," and that the beneficiary "will be an important pillar for the Academy to rely on when it reopens." She does not, however, state that the beneficiary had already served as an elementary school-level bible teacher at [REDACTED] as the petitioner has claimed. [REDACTED] states that she showed the officer "examples of [the beneficiary's] lesson plans," but again does not elaborate. Nothing in her new affidavit directly contradicts the officer's assertion that, according to [REDACTED], the beneficiary "had little to do with [the] academy when it was in session."

The petitioner submits copies of documents from an earlier nonimmigrant petition that it had filed on the beneficiary's behalf in 2005. In these materials, the petitioner indicated its intent to employ the beneficiary both in the academy and in the day care center, and acknowledged that the beneficiary would require certification as a day care worker. The implication is that the petitioner did not conceal its intention to employ the beneficiary, at least part of the time, in day care work. Nevertheless, it is very significant that, in the present immigrant petition, the petitioner did not mention or acknowledge the beneficiary's day care work until a USCIS officer visited the site.

Counsel acknowledges: "Recently due to lack of enrollment [REDACTED] did not have any classes. However, the school did not close but rather is in the process of marketing for new students. . . . [The beneficiary] will continue to teach Bible studies on campus." The petitioner never disclosed this important information to USCIS prior to the site visit, at which time it would have been impossible to disguise the school's inactivity. Even as late as February 2009, just before the site inspection, [REDACTED] referred to the beneficiary in the context of "bible teaching and theology" and did not so much as mention that, halfway through the 2008-2009 school year, [REDACTED] had no students and held no classes. The petitioner specifically indicated that it intended to employ the beneficiary as a teacher at [REDACTED]

Counsel correctly observes that, under the USCIS regulation at 8 C.F.R. § 204.5(m)(4), "the prior religious work need not correspond precisely to the type of work to be performed." Nevertheless, the prior work must have been religious work, and the petitioner's claims and attestations must be true. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. *See Anetekhai*

v. *I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988). [REDACTED] signed Part 9 of the Form I-360, thereby certifying under penalty of perjury that the evidence submitted with the petition was true and correct.

Regarding the beneficiary's documented compensation from [REDACTED] (even in years when [REDACTED] was in operation), counsel observes that "a close reading" of the academy's budget summary shows "a line item for the [REDACTED]. Similarly the [REDACTED] has a line item for ministry." Counsel states that this proves that the church, [REDACTED] and [REDACTED] "are part and parcel of the same Church." The academy's budget summary does include a line item marked simply [REDACTED] but the monthly expenses under that line item range between \$189.58 and \$368.76, amounts that are significantly less than the beneficiary's documented salary at the time. There is no reason to conclude that [REDACTED] despite having its own payroll budget, nevertheless funneled the beneficiary's salary through [REDACTED] for reasons unexplained. The minor overlaps in the different entities' budgets do not prove or imply that the beneficiary worked for the academy while on the day care center's payroll.

Doubt cast on any aspect of the petitioner's proof may 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92. In this instance, the petitioner has not submitted competent objective evidence to resolve the contradictory claims in the record. New statements from church or school officials cannot resolve the discrepancies, when the credibility of those very officials is what is in question in the first place.

The petitioner has not established that the beneficiary's prior day care work qualifies as a religious occupation. 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.

Counsel contends that the beneficiary's work with children of any age constituted "activities that have been considered a traditional religious activity for millennia – religious instruction and education." The record does not show what sort of "religious instruction" the beneficiary could have provided to children as young as two years of age (as observed by the inspecting USCIS officer). Prior to the appeal, the petitioner never claimed that [REDACTED] (as opposed to [REDACTED] provided religious instruction as opposed to basic day care; the petitioner, in the course of this proceeding (as opposed to the earlier nonimmigrant petition) never even disclosed the beneficiary's participation at [REDACTED]. This lack of candor necessarily casts the petitioner's overall credibility in a dim light. Under such circumstances, we cannot presume, without evidence, that the beneficiary's day care work amounts to a qualifying religious occupation.

Another factor when considering the beneficiary's prior employment relates to her compensation. The petitioner claims to have employed the beneficiary full time since late 2005. Nevertheless, an IRS Form W-2 in the record shows that [REDACTED] paid her only \$5,818.68 in 2006. The petitioner has not explained how so small an amount represents compensation for a year of full-time employment. In 2007 [REDACTED] paid the beneficiary \$15,333.20, more than two and a half times the 2006 amount, plus insurance which the 2006 records do not reflect. The beneficiary's low 2006 compensation, therefore, does not appear to be consistent with the petitioner's claim to have employed her full time throughout that year. Because the last four and a half months of 2006 fell during the two-year qualifying period, the beneficiary's 2006 employment and compensation are material issues.

For the above reasons, we agree with the director's conclusion that the petitioner has not adequately shown that the beneficiary continuously performed qualifying religious work throughout the two years immediately preceding the filing of the petition.

Beyond the director's decision, we have concerns about the validity of the job offer as the petitioner originally described it. The AAO may identify additional grounds for denial beyond what the Service Center identified 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 (9th 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 petitioner, at the time of filing, did not indicate that the beneficiary would shuttle between [REDACTED] and [REDACTED] as needed. Rather, the petitioner stated that the beneficiary would teach bible classes at [REDACTED]. We have already observed that [REDACTED], due to low enrollment, did not hold classes during the 2008-2009 school year. The suspension of classes at [REDACTED] has obvious and unavoidable implications for the ongoing validity of the job offer.

[REDACTED], on appeal, states that the petitioner plans to reopen [REDACTED], incorporating new changes to increase its viability. The petitioner's desire to resume operations at [REDACTED] however, does not guarantee that [REDACTED] will, in fact, be able to reopen. The petitioner submitted no evidence that its planned changes have resulted in increased enrollment that would permit [REDACTED] to operate as intended. Because the

record contains no verifiable evidence that [REDACTED] has resumed operations or is imminently to do so, we cannot find that the beneficiary's job offer, as originally described, actually exists.

The USCIS regulation at 8 C.F.R. § 103.2(b)(1) requires the petitioner to establish eligibility at the time of filing the petition. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Here, the petitioner filed the petition in August 2008, just before the start of the 2008-2009 school year, stating its intention to employ the beneficiary at [REDACTED]. The petitioner, however, held no classes at [REDACTED] that year. Therefore, even if the director had immediately approved the petition, the petitioner would not have been able to employ the beneficiary as a bible instructor at [REDACTED]. Even setting aside all other credibility issues in this proceeding, it is clear that the petitioner would not have been able to honor the job offer described in the petition. It may be that the petitioner could have found other duties for the beneficiary, but the job offer itself is material to the petition. If the job, as described, does not exist (for whatever reason), then USCIS cannot properly approve the petition. We cannot approve the petition based on the petitioner's subjective expectation, however sincere, that future conditions will eventually allow [REDACTED] to reopen.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.